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THESIS

**SHIFTING DRUG POLICY: THE POLITICS OF
MARIJUANA IN THE 21ST CENTURY**

by

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March 2014

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**SHIFTING DRUG POLICY: THE POLITICS OF MARIJUANA IN THE 21ST
CENTURY**

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ABSTRACT

Medical and recreational marijuana legalization, and public acceptance, is in a rapid state of change across the nation. Currently, there are 20 states along with the District of Columbia that have medical marijuana laws. Each of these state governments has passed legislation on a drug for medical purposes, in which the federal government maintains there was, and still remains, no basis for medical use. Additionally, Colorado and Washington have recently passed laws legalizing recreational marijuana use. These state laws are in conflict with the federal Controlled Substances Act (CSA) and place marijuana in a simultaneous legal and illegal status. This thesis will examine the history of the war on drugs and the role marijuana has filled in traditional policy. Conflicting state and federal marijuana laws, and various shifting international policies will be addressed in order to better understand the future strategic implications of staying with current policies or shifting to new ones. For the general public and policy makers alike, the most productive path forward is one examines the historical background, acknowledges current domestic and international perspectives, and gives equal weight to research of all possible solutions.

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LIST OF ACRONYMS AND ABBREVIATIONS

ACLU	American Civil Liberties Union
ATF	Bureau of Alcohol, Tobacco, Firearms and Explosives
BNDD	Bureau of Narcotics and Dangerous Drugs
CRS	Congressional Research Service
CSA	Controlled Substances Act
DEA	Drug Enforcement Administration
DOJ	Department of Justice
FARC	Revolutionary Armed Forces of Colombia
FBI	Federal Bureau of Investigation
FBN	Federal Bureau of Narcotics
INCБ	International Narcotics Control Board
IRS	Internal Revenue Service
ODALE	Office of Drug Abuse Law Enforcement
UNODC	United Nations Office of Drugs and Crime

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I. INTRODUCTION

A. PERSPECTIVES

The United States federal government has pursued a strong interdiction policy towards narcotics for nearly a century and spent the last 40 years waging a “war on drugs.” In this fight, the United States is not alone, the world as a whole has seen consistent drug use trends with every country participating in some form of drug prevention and control. Marijuana has traditionally been categorized along with narcotic drugs as illegal and subject to criminal penalties. The United Nations Office on Drugs and Crime recognizes that a balanced approach between reduction to supply and reduction in demand are required for the international community to make progress on stemming the threat of illegal drug use.¹ Despite U.S. and U.N. efforts to reduce or eliminate drug use, many countries as well as several U.S. states are pursuing alternate policies that include decriminalization and legalization of marijuana. What is the history of the war on drugs, and what role has marijuana filled in traditional policy? How do medical and recreational marijuana factor into the policy debate? How committed are nations that are changing their policy stance on marijuana? As perspectives on the issue begin to shift away from traditional U.S. policy on the subject, the political narratives and history of how we arrived at this point are important to understand future strategic implications of staying the course or shifting to new policies.

B. SHIFTING POLICY

Billions of dollars have been spent to control the flow of drugs from nations outside of the United States. The U.S. is historically one of the world’s largest consumers of illegal narcotics while at the same time leading world policy on enforcement and eradication measures. U.S. federal law classifies marijuana as a Schedule I drug along with heroin and lysergic acid diethylamide (LSD). The Drug Enforcement Agency (DEA)

¹ United Nations Office on Drugs and Crime, *World Drug Report 2012* (Vienna, Austria: United Nations Publication, 2012), iii.

refers to Schedule I drugs as “drugs with no currently accepted medical use and a high potential for abuse. Schedule I drugs are the most dangerous drugs of all the drug schedules with potentially severe psychological or physical dependence.”² Cocaine and methamphetamine are considered Schedule II drugs and therefore less dangerous than those classified as Schedule I, yet as recently as November 2012 Colorado and Washington voted to legalize marijuana for recreational use. Currently, there are 20 states along with the District of Columbia that have medical marijuana laws in place.³ See Figure 1. Each of these state governments has passed legislation on a drug for medical or recreational purposes, in which the federal government maintains there was, and still remains, no basis for any type of use. The state laws are in conflict with the federal Controlled Substances Act (CSA) and place marijuana in a simultaneous legal and illegal status.⁴

² U.S. Drug Enforcement Administration, “Drug Scheduling,” U.S. Department of Justice, accessed November 16, 2013, <http://www.justice.gov/dea/druginfo/ds.shtml>.

³ U.S. Office of National Drug Control Policy, “Marijuana,” The White House, accessed August 31, 2013, <http://www.whitehouse.gov/ondcp/marijuana>.

⁴ Todd Grabarsky, “Conflicting Federal and State Medical Marijuana Policies: A Threat to Cooperative Federalism,” 2013, http://works.bepress.com/todd_grabarsky/1/, 1.

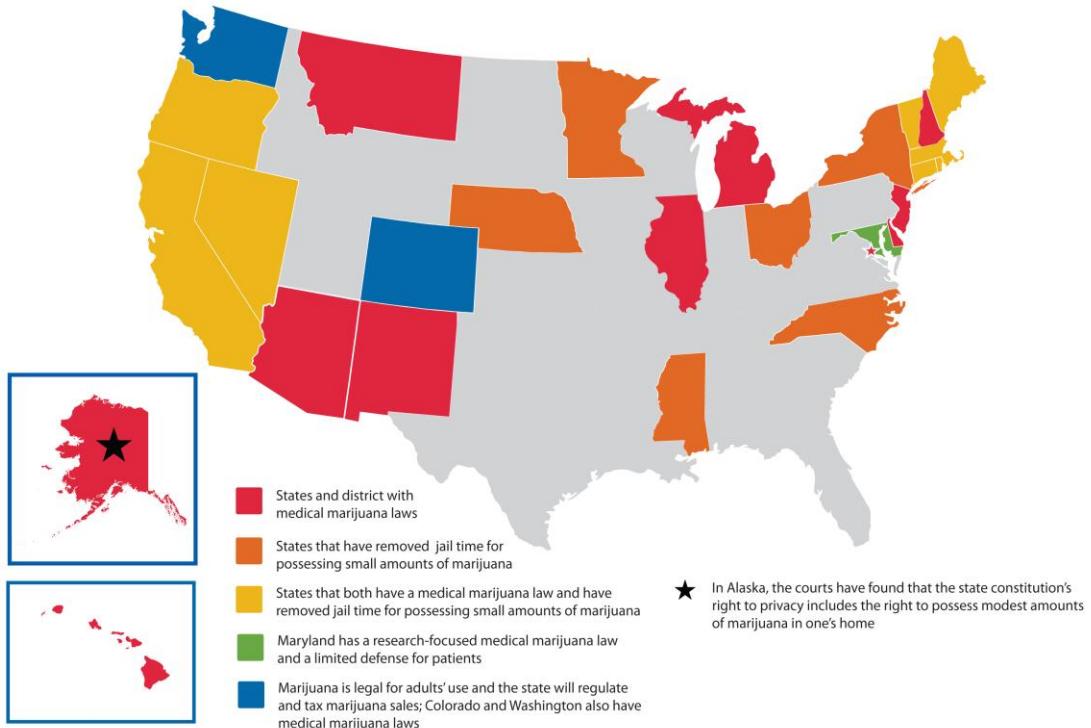


Figure 1. Conflicting state versus federal marijuana legislation in 2013.⁵

Law Professor Robert Mikos, who specializes in federalism and criminal law, states that the dispute over medical marijuana is “one of the most important federalism disputes in a generation.”⁶ Additionally, other nations are experiencing shifting political viewpoints on criminalization and legalization. Uruguay’s lower house passed a bill to legalize marijuana in July of 2013 with expectations that it would pass in the senate and be approved by the executive branch. As of December 10, 2013 the Uruguayan Senate approved the measure in a 16–13 vote and became the first country in the world to legalize marijuana.⁷ A congressional report in 2005 on the 108th Congress stated:

⁵ Marijuana Policy Project, “Map of State Marijuana Laws,” August 1, 2013, <http://www.mpp.org/assets/pdfs/library/Map-of-State-Marijuana-Laws.jpg>.

⁶ Robert Mikos, *On the Limits of Federal Supremacy: When States Relax (or Abandon) Marijuana Bans*, Cato Institute Policy Analysis, 2012, 3, <http://www.cato.org/publications/policy-analysis/limits-federal-supremacy-when-states-relax-or-abandon-marijuana-bans>.

⁷ “Uruguay Senate Approves Bill Legalising Marijuana Trade,” BBC, December 10, 2013, <http://www.bbc.co.uk/news/world-latin-america-25328656>.

The U.S. government remains committed to a policy of zero tolerance when it comes to the use of controlled substances. A different approach has recently emerged in Europe and Latin America as governments experiment with less restrictive policies, such as decriminalization and 'harm reduction' measures.⁸

The 108th Congress acknowledged that global drug policy partnerships with the U.S. were beginning to fracture. Policy shifts and enactment of new laws have only continued to accelerate in recent years. Currently, federal and state marijuana laws are in conflict, and U.S. foreign policy practices are being called into question based on these differences.

C. PROBLEMS AND HYPOTHESES

All topics on illicit substances tend to be highly contentious and include debates filled with facts and counter facts. For the general public and policy makers alike, the most productive path forward is one examines the historical background, acknowledges current domestic and international perspectives, and gives equal weight to research of all possible solutions. Drug use and abuse along with supply or demand reduction as primary methods of control have over a hundred years of debate and legal history here in the United States. Marijuana has been part of this control regime for the majority of that time. Although it is tempting to address drug control as a whole, the scope, debate, and possible outcomes are too large and varied. Conversely, based on classification as a narcotic and legislative scheduling of marijuana with other drugs, it is important to address drug control history, funding, and political policies as a whole while addressing changes directed specifically at marijuana.

Legalization measures in Washington, Colorado and Uruguay have the potential for global shifts on how the U.S. federal government as well as the rest of the world handles drug policy. Attitudes surrounding the legality of marijuana have varied in the past, yet until recently it has remained illegal, with both domestic and international law

⁸ Mark Eddy, *War on Drugs: Legislation in the 108th Congress and Related Developments* (Washington, DC: Congressional Research Service, 2013), accessed February 25, 2014, <https://opencrs.com/document/IB10113/>.

enforcement in place to combat its supply and demand. Domestically, California Proposition 215, which voters approved in 1996, effectively legalized marijuana for medical purposes and initiated the growth of changing state marijuana policies.⁹ It is possible that current momentum is enough to propel wider decriminalization and legalization measures for marijuana; however, history shows that changes generally occur over long periods of time. Fears of drug abuse, crime, and corruption of youth all have merit and may also lead policy makers at the federal level to determine that decriminalization and legalization measures are far too politically risky.

D. LITERATURE REVIEW

There are a vast number of papers, articles, reports, and books that both support as well as criticize the United States’ “War on Drugs.” The U.S. federal government has continued to maintain a similar policy approach for the last four decades while various U.S. state and international governments have begun to look for new approaches. Research on the topic results in four basic types of information—government, academic books and papers, public policy organizations, and polemical information. Government reports include United Nations Office on Drugs and Crime reports, International Narcotics Control Board reports, White House strategy papers, Office of National Drug Control Policy reports, and Congressional Research Service reports. Academic books, papers, and public policy reports address politics, economics, history, dangers, and possible solutions to the current drug war. In general most of the academic and public policy work tend to address one of two opposing viewpoints. Both tighter controls and continued enforcement are necessary, or conversely that alternate approaches need to be explored based on a perception of policy failure. The remaining polemical information concerning marijuana and the drug war in general follows a similar trend in opposing viewpoints as that of academic and public policy reports. This information is acknowledged based on its ability to spur on the debate as well as the large amount in

⁹ Grabarsky, “Conflicting Federal and State Medical Marijuana Policies,” 7.

existence, however its use in this thesis will be minimal based on the majority being opinionated and frequently hostile in nature.

1. Government

The United Nations produces a number of publications through the Office of Drugs and Crime (UNODC) concerning international drug control policy, enforcement efforts and worldwide consumption information. The primary publication is an annual *World Drug Report*, which contains detailed information on statistics, trends, illicit markets, problems, patterns and updates that have occurred during the latest year.¹⁰ The UNODC is the “custodian of the drug and crime conventions and protocols.”¹¹ The organization strives to have relevant and unbiased information in order to execute its mission of “contribute[ing] to the achievement of security and justice for all by making the world safer from crime, drugs and terrorism.”¹² Information that is produced recognizes the global scale and implications of changing drug patterns and polices. Although the primary emphases is on rule of law and control of illicit substances, the content focuses on factual and statistical information and open assessments of challenges that face all nations concerning drugs, crime, and the links that are often between the two.

The *World Drug Report* contains a separate subsection on marijuana within world drug markets and other subsections consisting of opiate, cocaine, and amphetamine-type stimulants.¹³ The most recent 2012 *World Drug Report* discusses that marijuana (referenced as cannabis in the report) is a drug that has a usage history dating back thousands of years, is currently used in every single country, and is produced in nearly all of them.¹⁴ It is admitted that historical data gathering has been limited based on small-scale cultivation, production, and usage in local markets. Despite this admission, the

¹⁰ United Nations Office on Drugs and Crime, *World Drug Report 2012* (Vienna, Austria: United Nations Publication, 2012).

¹¹ “Mission Statement,” United Nations Office of Drug Control, accessed November 21, 2013, <http://www.unodc.org/mexicoandcentralamerica/en/romex/mision.html>.

¹² Ibid.

¹³ United Nations Office on Drugs and Crime, *World Drug Report 2012*.

¹⁴ Ibid.

UNODC gathers information from a wide variety of international data resulting in a comprehensive view of world supply, demand, and shifts amongst various markets. Additional recent UNODC reports, such as *A Century of International Drug Control*, and *Cannabis: A Short Review*, provide a wealth of information concerning history, policy, and current research on drugs in general as well marijuana control, medical usage, and recreational initiatives.¹⁵ UNODC information in context to other sources is unbiased in presentation, yet clearly adheres to preservation of current international law and policy regarding control and regulation of all narcotic substances.

The International Narcotics Control Board (INCB) monitors compliance with international treaties concerning narcotics. The INCB is independent and quasi-judicial in executing its mandate of ensuring country compliance with the United Nations international drug control conventions. The INCB assesses each country's compliance with the conventions and "is called upon to ask for explanations in the event of apparent violations of the treaties, to propose appropriate remedial measures to Governments that are not fully applying the provisions of the treaties or are encountering difficulties in applying them."¹⁶ Similar to the UNODC, the INCB produces a wealth of information on specific countries and the drug control situation in each; however, the INCB advocates strict controls and promotes rigid adherence to the current enacted international laws. In light of recent legalization measures in Colorado, Washington and Uruguay, "The Board notes with serious concern the ongoing move towards the legalization of cannabis for non-medical purposes in some parts of the United States of America."¹⁷ Additionally, prior to the recent Uruguayan Senate approval on marijuana, the INCB released the following statement: "The Board is very concerned that the draft legislation currently

¹⁵ United Nations Office on Drugs and Crime, *100 Years of Drug Control* (Vienna, Austria: United Nations Publication, 2009), http://www.unodc.org/documents/data-and-analysis/Studies/100_Years_of_Drug_Control.pdf; United Nations Office on Drugs and Crime, *Cannabis: A Short Review* (Vienna, Austria: United Nations Publication, 2012), https://www.unodc.org/documents/drug-prevention-and-treatment/cannabis_review.pdf.

¹⁶ "Mandate and Functions," International Narcotics Control Board, accessed November 21, 2013, <http://www.incb.org/incb/en/about/mandate-functions.html>.

¹⁷ *Report of the International Narcotics Control Board for 2012*, International Narcotics Control Board, <http://www.incb.org/incb/en/publications/annual-reports/annual-report-2012.html>, 11.

being considered in Uruguay would, if adopted, legalize production, sale and consumption of cannabis for recreational purposes.”¹⁸ The United States in particular is a founding member and historical proponent of international narcotics control and treaties. Any shift in the U.S. federal government’s policy stance towards decriminalization or legalization of any currently illicit drug would have international ramifications.

President Barack Obama’s *National Drug Control Strategy 2013* outlines the administration’s policy and international cooperation on drug control. It is clear that legalization initiatives are not part of the federal approach to solving the difficult problems associated with narcotic production, trafficking, and use. Instead, the administration states that it is charting a “third way” in policy that aims to balance health and law enforcement. Historically the U.S. has favored supply side elimination, strict law enforcement and harsh criminal penalties as methods of narcotic deterrent. Funding for treatment and prevention, although varied, has in general been neglected in favor of funding for law enforcement and a criminal prosecution approach. The most recent year funding for supply and demand reductions were evenly split was 1977.¹⁹ Subsequently, the trend was primarily two-thirds for supply reduction and one-third for demand reduction with a gradual shift towards a 2013 split of 59 percent for supply and 41 percent for demand.²⁰ The Obama administration acknowledges that drug addiction is a disease and proposes that a twenty-first century approach to drug policy balances public health, law enforcement and international partnerships. This policy shift attempts to rebalance towards reduction in demand through funding for public health, safety, prevention, and treatment. Marijuana’s prevalence, medical use claims, and shift in state laws are addressed specifically on the White House Office of National Drug Control Policy website. In order to answer the public debate concerning marijuana, a research-

¹⁸ International Narcotics Control Board, “INCB is Concerned about Draft Cannabis Legislation in Uruguay,” United Nations Information Service, accessed November 21, 2013, http://www.incb.org/documents/Publications/PressRelease/PR2013/press_release_191113e.pdf.

¹⁹ Michael F. Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy* (Carlisle: U.S. Army War College Press, 2012), 5.

²⁰ Ibid., 14.

based approach is put forward as the administrations preferred method. Facts, state laws, public health consequences, and Department of Justice (DOJ) information are all linked within the resource center.²¹

The Congressional Research Service (CRS) continually produces reports for Congress, many of which deal with drug control policy, international initiatives, foreign policy challenges, and the relationship between the U.S. and foreign governments concerning narcotic enforcement. Latin America and the Caribbean are priority regions for the United States concerning drug policy. In 2011, the CRS produced *Latin America and the Caribbean: Illicit Drug Trafficking and U.S. Counterdrug Programs* to provide U.S. antidrug assistance program and Western Hemisphere policy issues for Congress.²² Historical basis and current policy information is provided for Congress to review counterdrug assistance based on approved funding, foreign assistance conditions, and U.S. counter narcotics assistance. Specifically cited in the report is criticism of U.S. drug policy from the Latin American Commission on Drugs and Democracy, which is co-chaired by former presidents of Brazil, Colombia, and Mexico.²³ It is important to recognize that the U.S. provides significant funding—1.5 billion of the fiscal year 2014 request of 25.4 billion—to various international governments located primarily within the Western Hemisphere as a partnership initiative on drug control and policy.²⁴ The strength of these partnerships and the resulting return on investment are shaped by regional support and commitment to U.S. policies. Three additional reports were produced in 2013 that amplify information concerning Latin America, International Drug Control Policy, and domestic ONDCP budget reauthorization concerns. Although CRS reports are another government source, they provide timely information on policy issues. The reports

²¹ U.S. Office of National Drug Control Policy, “Policy and Research,” The White House, accessed November 21, 2013, <http://www.whitehouse.gov/ondcp/policy-and-research>.

²² Clare Ribando Seelke et al., *Latin America and the Caribbean: Illicit Drug Trafficking and the U.S. Counterdrug Programs* (Washington, DC: Congressional Research Service, 2013), accessed August 28, 2013, <http://www.fas.org/sgp/crs/row/R41215.pdf>.

²³ Ibid., 24.

²⁴ Liana Sun Wyler, *International Drug Control Policy: Background and U.S. Responses* (Washington, DC: Congressional Research Service, 2013), accessed August 28, 2013. <http://www.fas.org/sgp/crs/row/RL34543.pdf>.

are compiled by area specialists and analysts that research and present information in a non-partisan format that specifically highlights various, and sometimes contentious, viewpoints on specific topics.

2. Academic

In researching full-length books that cover drug politics, two things tend to stand out. A majority of the books are a collection of chapters by multiple authors and a single editor. This format avoids a singular approach and presents a wide variety of research and policy perspectives. Additionally, a large number of books were published in the very late 1980s up through all of the 1990s. An explanation for the explosion of information during this period is the renewal of the “war” with President Ronald Regan and follow-on expansion of efforts by George H.W. Bush. The time period is marked by an escalation in funding from millions to billions of dollars, a domestic theme of “zero tolerance,” strengthening of criminal penalties, and law enforcement that began including the Armed Forces.²⁵ Based on these shifts in policy, it appears that many scholars started to ask questions about the effectiveness of approaches that were decades old. Marijuana is occasionally addressed as a stand-alone topic; however, in much of the literature it is more common to include policies on marijuana as a larger discussion concerning drugs overall. William O. Walker III, a history professor specializing in narcotics, edited several books containing a multitude of essays that selectively look at various aspects of drug policy, drug control, and cultural aspects of drug use in the Western Hemisphere. Each of the essays focuses on a specific aspect of drugs in relation to history, control, or policy.²⁶ The approaches are analytical in nature and generally conclude that many of the policies in place have had significant failures based on the original objectives. Arguments

²⁵ Eva Bertram et al., *Drug War Politics: The Price of Denial* (Berkeley, CA: University of California Press, 1996), 110; Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 7; U.S. Congress. House. *Anti-Drug Abuse Act of 1986*. HR 5729. 99th Cong., Library of Congress, accessed October 8, 2013, <http://thomas.loc.gov/cgi-bin/bdquery/z?d099:H.R.5729:@@@L>.

²⁶ William O. Walker III, *Drugs in the Western Hemisphere: An Odyssey of Cultures in Conflict*, ed. William O. Walker III (Wilmington: Scholarly Resources Inc., 1996); William O. Walker III, *Drug Control Policy: Essays in Historical and Comparative Perspective*, edited by William O. Walker III (University Park: Pennsylvania State University Press, 1992).

are made that escalation of current failed policies will only continue to produce results that contain aspects of failure.²⁷ The importance of this body of literature is in addressing the many questions that surround current and proposed legislation and foreign policy. Understanding the historical arguments that led to past policy and international agreements is used to highlight the difficulties that surround current practices as well as difficulties that lie in alternate approaches to control.²⁸

Although a large body of the information is centered on the 1990s, information has been published on marijuana policy and drug control for decades. Many contain similar arguments and continue to maintain relevance to the current questions of legalization today. Demonstrating the time span of this argument is a book titled *Marijuana* edited by Erich Goode and published in 1969. The editor addresses the controversy surrounding marijuana legalization and the views that “span the spectrum of possibilities—from complete legalization and unrestricted use to the institution of even stricter penalties.”²⁹ The author goes on to state the three most common views in 1969 are:

one holds that the present legal status, with its present penalty structure, should be maintained; another holds that though illegality should be maintained, the penalties should be lessened. And the third favors legalization with restriction analogous to those placed on the consumption of liquor.³⁰

Forty-four years later the ramifications of each approach are still being debated. The stark difference however, is that today the U.S. currently has 20 state legalizations of marijuana for medical purposes and two state legalizations for recreational use.

²⁷ Walker, *Drug Control Policy*, 1–4.

²⁸ Ibid., 8.

²⁹ Erich Goode, *Marijuana*, (New York: Atherton Press, 1969), 137.

³⁰ Goode, *Marijuana*, 137.

3. Public Policy

Research papers from the RAND Corporation, National Bureau of Economic Research, the World Bank, the Strategic Studies Institute and others provide a variety of information concerning counter drug strategy, historical foundations, and alternatives. The RAND corporation produced two reports in 2010 dealing with changing marijuana policies that were primarily driven on the prospect that California would become the first state to pass legislation legalizing marijuana beyond medical use. Although California has yet to pass full legalization measures, the issues addressed are applicable based on Colorado and Washington's recent legalization. The first, *Marijuana Legalization: What Can Be Learned from Other Countries?*, provides a summary of marijuana initiatives that have been put in place by countries around the world.³¹ Production and consumption innovations are separated and data is presented on each for the limited number of countries that have enacted policies different than the word wide norm of criminalization. The second, *Altered State? Assessing How Marijuana Legalization in California Could Influence Marijuana Consumption and Public Budgets*, is an in depth study that covers the overall California marijuana landscape, the evolving legal environment, projection of effects, and alternative scenarios.³² Of particular note is a section on possible federal responses, how congress would react and potential consequences. Each of these papers contains discussion items that approach marijuana legalization challenges from multiple angles and aid in an overall assessment of consequences.

E. METHODS AND THESIS OVERVIEW

This paper will be a combination of historical and comparative study. I will examine the historical roots of drug policy in the U.S. and resulting foreign policy practices. Drug policy today is rooted in legislative actions of the past. The fundamental reasoning behind the implementation of those policies may give an indication of the

³¹ Peter H. Reuter, *Marijuana Legalization: What Can Be Learned from Other Countries?* (Santa Monica: RAND Corporation, 2010), http://www.rand.org/pubs/working_papers/WR771.

³² Beau Kilmer, et al., *Altered State? Assessing How Marijuana Legalization in California Could Influence Marijuana Consumption and Public Budgets* (Santa Monica: RAND Corporation, 2010), http://www.rand.org/pubs/occasional_papers/OP315.

potential for a shift in federal policy on marijuana. As a part of the historical study, U.S. foreign policy on drug control will be examined to determine the effects of a possible change in federal policy on international relations.

Medical marijuana has a growing list of participating states in legalization. Analysis of how medical marijuana initiatives have continued to grow and how they may conflict with recreational use initiatives will further expand the understanding of potential continued legalization efforts.

Comparison of countries with historical or current shifting policies on marijuana will provide an international viewpoint on the same questions that the United States is facing with continued legalization efforts. Current federal policy remains unchanged and leads to both a conflict between state and federal law as well as international criticism of traditional foreign policy on U.S. drug control. Analysis of the most prominent countries with shifting policies will provide a deeper understanding of the potential for marijuana to become more widely accepted on the international stage.

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II. WAR ON DRUGS: A HISTORICAL CONTEXT

A. INTRODUCTION

Control of marijuana's and its historical trajectory in the United States has been part of a larger scope question concerning all illicit substances. What led the U.S. to declare a "War on Drugs" to the extent that it became a U.S. domestic and foreign policy priority requiring annual expenditures of billions of dollars? The war on drugs as a whole has both domestic and foreign policy components that affect marijuana and need to be understood in order to analyze current and possible future marijuana debates. The U.S. is historically one of the world's largest consumers of illegal narcotics while at the same time leading world policy on enforcement and eradication measures. Expanding conflicts between local, state, federal, and international visions of marijuana will continue to erode effective policy coordination and enforcement implementation if not addressed. How did we get to this point? Domestic drug war concerns, and subsequent policy, ultimately contribute to foreign policy in practice. Subsequently, those foreign policies can later shape domestic attitudes and practices. Federally, the U.S. has continued to maintain a similar domestic and foreign policy approach for the last four decades. U.S. states and international movements have begun to look for new approaches. Historical narratives are important to understand future strategic implications of staying the course or shifting to new policies.

B. FIRST INROADS TO COMBAT NARCOTIC SUBSTANCES WITH INTERNATIONAL COOPERATION

The deepest roots of U.S. foreign policy on narcotics are in a 1906 endorsement of a report on the opium trade by the U.S. Department of State. The United States has a long domestic history with marijuana that dates back to the 1600s when plants were first brought to English colonies for rope and cloth.³³ Subsequently, alcohol, opium, heroin,

³³ John C. McWilliams, "Through the Past Darkly: The Politics and Policies of America's Drug War," in *Drug Control Policy*, ed. William O. Walker (University Park, PA: The Pennsylvania State University Press, 1992), 8.

and cocaine all played a role in American society with legal impunity up through the late 1800s. Specifically, morphine use was high during and after the Civil War and opium continued to grow in both consumption and availability. As information grew on the medical as well as recreational use of various substances, there were local attempts at restriction, regulation, and labeling. Despite this, the federal government was minimally involved prior to acquiring the Philippines in 1898. Under Spanish rule, opium retail outlets had been set up in the Philippines with 190 outlets operating in the city of Manila alone.³⁴ John McWilliams states, “After nearly three centuries of virtually no regulation of any drugs, a changing social climate at home and a desire to drive Chinese opium dealers out of the recently acquired Philippines compelled the government finally to act.”³⁵ Although many other factors including race, religious prohibitionist attitudes, and perceptions of drug use and crime were contributors domestically, the Philippines set in motion the process of U.S. led international narcotics control. On August 8th 1903 the *New York Times* reported:

Major Edwin C. Carter, Bishop Brent, and Dr. Albert had been appointed as an Opium Commission to visit countries where opium is used and ascertain the methods of regulation and control. The commission will visit Japan, Formosa, Shanghai, Hong Kong, Singapore, Java, and Burma. An investigation of this kind is thought necessary on account of the opposition that has developed to the proposed bill for the regulation of opium.³⁶

The commission recommended that opium should be regulated and be for medical use only. In order to curb the domestic use in the Philippines, it was understood that the U.S. would have to solicit international effort.³⁷

At the suggestion of the U.S., an International Commission of Inquiry was formed to discuss and decide how to mitigate opium consumption. Trade in opium accounted for

³⁴ Julia Buxton, *The Historical Foundations of the Narcotic Drug Control Regime*, World Bank, accessed February 25, 2014, <http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-4553>.

³⁵ McWilliams, “Through the Past Darkly,” 9.

³⁶ “Opium Commission Named: Will Investigate and Recommend Regulation Methods for the Philippines,” *New York Times*, August 8, 1903, Schaffer Library of Drug Policy, accessed September 22, 2013, http://druglibrary.net/schaffer/History/e1900/opium_commission_named.htm.

³⁷ Buxton, *The Historical Foundations of the Narcotic Drug Control Regime*, 10–11.

significant revenue flows and had deep political interests; therefore, the majority of the great world powers of the time were invited to attend. The commission was held in Shanghai, China for 26 days in February of 1909. The U.S. brought wide scope opium question proposals for uniform national laws and cooperation. The British added program questions regarding morphine and cocaine, while the Italians added the question of Indian hemp drugs. None of the commission's declarations were binding or had the ability to become international law. Based on the perceived importance of the opium problem, the U.S. proposed that a conference should be held at The Hague to give sanction to the resolutions.³⁸

On December 1, 1911, the International Opium Conference was held at The Hague. Early in conference it was recognized that participation was not wide enough for the scope of the topic. Twelve countries were represented and all had previously participated in the Shanghai commission. Of the 34 nations not represented, it was specifically recognized that no Latin American countries had been invited. Latin America's impact on the subject stemmed from the fact that many of them had the raw materials and narcotic production ability for supply to other parts of the world. The U.S. along with the government of the Netherlands would be given the task of securing sympathy and signatures from Latin American nations in the years following the conclusion of the conference. By holding the conference at The Hague, the agreements became effective as international law in 1915 and subsequently set the foundation for international control of opium, morphine, heroine, and cocaine while excluding marijuana. By 1949, 67 countries had signed and ratified the treaty.³⁹

C. LEGISLATIVE BUILDUP AND CREATION OF FEDERAL AGENCIES

The Harrison Narcotics Tax Act of 1914 was a successfully passed version of previous attempts to pass legislation on domestic drug policy. Supporters of previous bills, specifically Dr. Hamilton Wright, saw the necessity of domestic narcotic control in

³⁸ United Nations Office on Drugs and Crime, *100 Years of Drug Control*, 7; Walker, *Drugs in the Western Hemisphere*, 51–51.

³⁹ Walker, *Drugs in the Western Hemisphere*, 53–55.

order for the United States to have foreign policy influence and credibility. Dr. Wright assisted in the creation of a bill that was introduced to Congress in 1910 by Congressman David Foster. The bill was designed to restrict the “nonmedical use of opiates, cocaine, chloral hydrate, and cannabis.”⁴⁰ Ultimately, the bill introduced by Foster would fail based on its radical nature, failure to compromise on harsh prohibitionist measures, and lack of exemptions for the medical and pharmaceutical communities.⁴¹ Dr. Wright, along with Secretary of State William Jennings Bryan, would continue to advocate and solicit a sponsor for legislation that supported the State Departments international narcotics control stance.⁴² Congressmen Francis B. Harrison introduced a bill that had similarities to the Foster bill but left open provisions for discussion and compromise. After a year of debates and amendments the bill passed and was signed into law by President Woodrow Wilson in late 1914.⁴³ The Harrison Narcotics Tax Act was passed in the form of a tax bill in order to avoid concern regarding federal infringement on states policing powers.⁴⁴ Although marijuana had been excluded, the bill enforced registration, transaction records, and tax of opium, heroin, and morphine. The act was founded as a regulatory measure, but in essence it created a foundation for follow on prohibitionist and enforcement laws, as well as signaling a shift in mindset from addiction perceived as a disease to that of a criminal act.⁴⁵

Federal control and regulation continued to increase as perceptions of links between race, crime, and use of various drugs spread. Statistics at the time demonstrate this link:

⁴⁰ McWilliams, “Through the Past Darkly,” 9–10.

⁴¹ Bertram et al., *Drug War Politics*, 66.

⁴² *Ibid.*, 66.

⁴³ McWilliams, “Through the Past Darkly,” 10.

⁴⁴ Bertram et al., *Drug War Politics*, 67.

⁴⁵ McWilliams, “Through the Past Darkly,” 10–11.

By April 1928, penitentiaries, with enough cells to hold 3,738 inmates, were housing 7,598 offenders....[by June of 1928] of the 7,738 prisoners incarcerated in the federal system, more than one-third—2529 or twice the number of the 1,156 prohibition offenders—were serving sentences for violating the Harrison law.⁴⁶

Continued efforts towards enforcement expansion resulted in the creation of the Federal Bureau of Narcotics (FBN) in July 1930 as a new agency within the Treasury Department. Harry J. Anslinger was appointed the agencies head and would remain in that position for the next 32 years until his retirement in 1962. Anslinger was aggressive in his promotion of anti-drug campaigns, actively protected FBN's budget during the depression era, and worked to expand the agencies role in both domestic and foreign matters. Stepping into the office, “he believed that the primary enforcement challenge was to control the drug supply, particularly from abroad.”⁴⁷

It was not only drug flows from abroad that the United States was concerned with during the 1930s. The surplus labor supplied by Mexican migrants was unwelcome and led to suspicion, fear, and linkages between Mexicans, crime, and marijuana. The roots of marijuana control stem from domestic fears and misinformation as well as pressure on foreign governments to participate in international efforts towards drug eradication.⁴⁸ Latin American nations were a focus of U.S. pressure to enact controls on production and trafficking of drugs. This supply side pressure led Mexico to point to U.S. domestic consumption and demand.⁴⁹ Although efforts were made to include marijuana into the Harrison Act, support was weak and the pharmaceutical industry was in opposition.

Marijuana in American society was not viewed as a drug that spanned all classes and ethnicities in the same fashion as alcohol and tobacco. Although there were prohibitionist moral arguments against marijuana, the primary view was that it was a form of narcotic that was primarily used by ethnic minorities – specifically Mexican

⁴⁶ Ibid., 13.

⁴⁷ Bertram et al., *Drug War Politics*, 79.

⁴⁸ McWilliams, “Through the Past Darkly,” 14–17; Walker, *Drugs in the Western Hemisphere*, 57–58.

⁴⁹ Walker, *Drugs in the Western Hemisphere*, 58.

migrants. Initially, towns that contained large Mexican migrant populations began passing anti-marijuana laws. This trend continued at the state level. Between 1915 and 1933, 33 states had passed legislation prohibiting nonmedical marijuana.⁵⁰ Richard Bonnie and Charles Whitebread relate these fears of social bias in *The Marijuana Conviction*:

From this instinctive classification of marihuana with opium, morphine, heroin, and cocaine flowed the entire set of factual supports on which narcotics prohibition rested. Marihuana was presumed to be addictive, its use inevitably tending to excess. Since its users—Mexicans, West Indians, blacks, and underworld whites—were associated in the public mind with crime, particularly of a violent nature, the association applied also to marihuana, which had a similar reputation in Mexican folklore. Since the nation was preoccupied during the twenties with lawlessness, especially among the foreign born, this association was a strong one.⁵¹

By the mid 1930s, marijuana consumption had increased, social dynamics had changed to fear, and Anslinger's view of marijuana prohibition had shifted to one that benefitted the FBN. Mexico felt that the U.S. was not doing enough to combat its own drug problems while pressure from within the U.S. mounted to enact further legislation to combat the marijuana problem.⁵² The Marijuana Tax Act passed in 1937 and was similar in function to the Harrison Act in that it was regulatory in nature, yet facilitated criminalization and subsequent enforcement. The Marijuana Tax Act restricted production, possession, sale, or transfer of marijuana to medical or industrial use. The Act required registration and reporting of all transactions and more importantly, a complicated a regulatory scheme with failures resulting in heavy fines and imprisonment. In an introduction to the full text of the Act posted at the Schaffer Library of Drug Policy, David Solomon highlights how the regulation was designed to discourage marijuana for any purpose.

⁵⁰ Richard J. Bonnie and Charles H. Whitebread II, *The Marihuana Conviction: A History of Marihuana Prohibition in the United States* (Charlottesville, VA: University of Virginia Press, 1974), 51.

⁵¹ Ibid., 51–52.

⁵² Bertram et al., *Drug War Politics*, 80–81.

The message becomes entirely clear when, having finished the short text of the Act itself, one proceeds to the sixty-odd pages of administrative and enforcement procedures...[which] calls for a maze of affidavits, depositions, sworn statements, and constant Treasury Department police inspection in every instance that marijuana is bought, sold, used, raised, distributed, given away, and so on. Physicians who wish to purchase the one-dollar tax stamp so that they might prescribe it for their patients are forced to report such use to the Federal Bureau of Narcotics in sworn and attested detail, revealing the name and address of the patient, the nature of his ailment, the dates and amounts prescribed.⁵³

The effect of the tax act was that any association with marijuana outside of the strict provisions of the Act became a federal crime.⁵⁴

Two more pieces of legislation would also be passed after the nation began to reprioritize its focus following WWII. *Drug War Politics* states, “As the cold war began in earnest, the FBN shrewdly tied drugs to the foreign threat of communism. ‘Red’ China was accused of trying to destroy Western society and of securing hard cash through heroin sales to U.S. drug pushers.”⁵⁵ Efforts to significantly increase the penalties for possession of narcotics resulted in the Boggs Act of 1951 and the Narcotics Control Act of 1956. The Boggs Act set in motion uniform mandatory minimum sentences for offences under the Marijuana Tax Act and Narcotics Import Export Act, with a first conviction resulting in a minimum of two and up to five years imprisonment. The second offense resulted in a mandatory five and up to ten, with the third conviction resulting in a mandatory 10 and up to 20 years of imprisonment with no possibility of parole. The Narcotics Control Act stiffened the uniform penalties and effectively doubled the provisions of the Boggs Act to include a provision to implement the death penalty for selling heroine to anyone under 18.⁵⁶ Federal control of narcotics enforcement (with

⁵³ David Solomon, “Introduction to Full Text of the Marihuana Tax Act as Passed in 1937,” Schaffer Library of Drug Policy, accessed March 1, 2014, <http://www.druglibrary.org/schaffer/hemp/taxact/mjtaxact.htm>.

⁵⁴ Bonnie and Whitebread, *The Marihuana Conviction*, 175.

⁵⁵ Bertram et al., *Drug War Politics*, 84.

⁵⁶ McWilliams, “Through the Past Darkly,” 18–20.

marijuana penalties grouped solidly into the narcotics category) had been fully implemented domestically, yet the problem would grow and then explode during the 1960s and 1970s.

D. BEGINNING OF THE “WAR” WITH NIXON

Nixon’s declaration of war and a subsequent push toward supply side strategies was based on domestic behavior in the 1960s. A significant spike in drug use occurred as youth rebellion and rejection of traditional values became wide spread. Heroin and marijuana use continued to rise along with newer drugs such as amphetamines and LSD.⁵⁷ American ideals of personal freedom, a larger population with drug taking experience, and greater understanding of differences between various drugs pushed back, or simply disregarded, a system that lumped all drug possession and use as criminal and immoral. On the domestic stage, widespread use led popular distinctions between hard and soft drugs as well as perceived dangers to society.⁵⁸ Movements to decriminalize marijuana began to take shape based on realizations of the damaging effects of single-minded anti-drug punitive campaigns. An example of the level to which this change of mindset over the 1960s and 1970s had risen was, “During Carter administration [in the late 1970s], the president himself supported legislation to decriminalize position of small quantities of marijuana.”⁵⁹ During the 1960s enforcement and penalties continued to increase while at the same time wide spread experimentation, and continued consumption, rapidly expanded. In the period between 1965 and 1970 marijuana arrests had increased tenfold and it is estimated that between 1960 to 1970 heroin addicts increased from 50,000 to half a million.⁶⁰

Internationally, progress on narcotics control had been overlapping and complicated by multiple legal agreements. The 1961 Single Convention on Narcotic Drugs aimed to streamline the process and subsequently became “the cornerstone of

⁵⁷ Ibid., 20.

⁵⁸ Bertram et al., *Drug War Politics*, 93.

⁵⁹ Quoted in Bertram et al., *Drug War Politics*, 93.

⁶⁰ UNODC, *100 Years of Drug Control*, 62.

today's international drug control regime."⁶¹ The Single Convention had three main objectives, all of which complimented the domestic efforts of the U.S. The first objective was to streamline, codify, and extend controls under a single document that all nations could accede to. The second was to simplify the existing machinery of control in order to increase efficiency. The International Narcotics Control Board (INBC) was effectively established through this objective. The third was to extend existing controls to raw materials, plant cultivation, and the prevention of consumption other than for medical reasons. By 2008, 183 nations had acceded to the 1961 Single Convention and its subsequent amendments.⁶²

Richard Nixon's 1968 presidential campaign revolved around a domestic theme of "law and order."⁶³ His overall view was that domestic crime and drug use were inextricably linked. Crime rates had risen and Nixon's approach was to increase penalties, link the concepts of drugs and crime together in the mind of the public, and embark on a crusade to eliminate narcotics through severing the trafficking supply lines as well as eradication within source countries. In a 1969 address to congress, Nixon stated, "Within the last decade, the abuse of drugs has grown from essentially a local police problem into a serious national threat to the personal health and safety of millions of Americans."⁶⁴ He went on to state,

The problem has assumed the dimensions of a national emergency....Drug traffic is public enemy number one domestically in the United States today and we must wage a total offensive, worldwide, nationwide, government wide, and if I may say so, media wide.⁶⁵

Out of these announcements came legislation and law enforcement changes designed to include changes at home as well as a campaign abroad to intercept the U.S. public enemy number one.

⁶¹ Ibid., 11.

⁶² Ibid., 60.

⁶³ Bertram et al., *Drug War Politics*, 105.

⁶⁴ Quoted in Bertram et al., *Drug War Politics*, 105.

⁶⁵ Ibid., 106.

Nixon's domestic portion of the offensive war was designed to reorganize and increase enforcement through the Bureau of Narcotics and Dangerous Drugs (BNDD) as well implementation of the 1970 Comprehensive Drug Abuse Prevention and Control Act and associated Title II Controlled Substances Act (CSA).⁶⁶ These laws aligned federal law with the international Single Convention law and implemented a series of schedules to classify each based on potential for abuse, safety risks, and prescription regulation. See Table 1. One of the more punitive measures of the act allowed for “no knock” warrants that allowed federal agents to search private homes and businesses suspected of drug activity.⁶⁷ Nixon would go on to establish the Office of Drug Abuse Law Enforcement (ODALE) directly under White House control. In 1973, he would consolidate the BNDD, ODALE, the Office of National Narcotics Intelligence, and the Customs Service Drug Investigation into the Drug Enforcement Agency (DEA), which still operates today.⁶⁸

⁶⁶ Buxton, *The Historical Foundations of the Narcotic Drug Control Regime*, 24; Bertram, et al., *Drug War Politics*, 106.

⁶⁷ Bertram et al., *Drug War Politics*, 106.

⁶⁸ Ibid., 108.

CSA Drug Scheduling
Schedule I
Drugs, substances, or chemicals defined as drugs with no currently accepted medical use and a high potential for abuse . Schedule I drugs are the most dangerous drugs of all the drug schedules with potentially severe psychological or physical dependence.
Examples
heroin, lysergic acid diethylamide (LSD), marijuana (cannabis) , 3,4-methylenedioxymethamphetamine (ecstasy), methaqualone, and peyote
Schedule II
Substances, or chemicals defined as drugs with a high potential for abuse, less abuse potential than Schedule I drugs, with use potentially leading to severe psychological or physical dependence. These drugs are also considered dangerous.
Examples
cocaine, methamphetamine, methadone, hydromorphone (Dilaudid), meperidine (Demerol), oxycodone (OxyContin), fentanyl, Dexedrine, Adderall, and Ritalin
Schedule III
Substances, or chemicals defined as drugs with a moderate to low potential for physical and psychological dependence. Schedule III drugs abuse potential is less than Schedule I and Schedule II drugs but more than Schedule IV.
Examples
Combination products with less than 15 milligrams of hydrocodone per dosage unit (Vicodin), Products containing less than 90 milligrams of codeine per dosage unit (Tylenol with codeine), ketamine, anabolic steroids, testosterone
Schedule IV
Substances, or chemicals are defined as drugs with a low potential for abuse and low risk of dependence.
Examples
Xanax, Soma, Darvon, Darvocet, Valium, Ativan, Talwin, Ambien
Schedule V
Substances, or chemicals defined as drugs with lower potential for abuse than Schedule IV and consist of preparations containing limited quantities of certain narcotics. Schedule V drugs are generally used for antidiarrheal, antitussive, and analgesic purposes.
Examples
cough preparations with less than 200 milligrams of codeine or per 100 milliliters (Robitussin AC), Lomotil, Motofen, Lyrica, Parepectolin

Table 1. U.S. federal drug schedules under the Controlled Substances Act.⁶⁹

⁶⁹ U.S. Drug Enforcement Administration, “Drug Scheduling.”

On the foreign war front, drug producers and traffickers from abroad became national enemies. Nixon was determined to not only stop demand in the U.S. but to also to “strike at the ‘supply’ side of the drug equation—to halt the drug traffic by striking at the illegal producers of drugs, the growing of those plants from which drugs are derived, and trafficking in these drugs beyond our borders.”⁷⁰

In June 1969, the U.S. made an attempt to convince Mexico to go after smugglers and enact a marijuana plant defoliation program. The Mexicans hesitated to enact any reforms or invest in the ideas of the U.S. In September of 1969 Operation Intercept was launched in an attempt to seal off the southern border from the flow of drugs, primarily marijuana. The concept was to place adequate Border, Customs, and Immigration agents along the 2,000-mile stretch to stop and inspect all traffic. Coordination with Mexican authorities on enactment of the new border inspection plan was minimal and took Mexico by surprise when it actually went into motion. The plan lasted only three weeks. Border crossing wait times increased to hours, businesses emptied in cities along the border, and commerce slowed. Based on the disastrous economic effects, the backlash from Mexico, and a perceived strain on future international relations, the plan was called off. Operation Intercept was successful in that it was replaced with a plan called Operation Cooperation designed to move Mexico and the United States into a shared strategy on drug enforcement.⁷¹ It also demonstrated Nixon’s resolve on making the war on drugs a foreign policy priority.

Nixon’s other main foreign policy thrust in stemming the flow of narcotics involved Turkey. At the time it was estimated that Turkey produced 80 percent of the opium used to produce heroine in the United States. Diplomatic pressure was put on Turkey to dramatically reduce the amount of poppy cultivation to a number that could be justified for licit purposes. Turkey was a member of the 1961 Single Convention, yet had a long history of poppy cultivation that resulted in a large number of farmers dependent

⁷⁰ Quoted in Bertram et al., *Drug War Politics*, 106.

⁷¹ Kate Boyle, “Operation Intercept: The Perils of Unilateralism,” National Security Archive, accessed October 3, 2013, <http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB86/index2.htm>.

on the crop for their livelihoods. After diplomatic discussions on the subject, the United States offered to assist Turkey in the effort to implement crop substitution for most farmers as well as licensing regulation for the amount of poppy required for the medical industry. The U.S. ultimately paid Turkey 35 million in aid for its efforts and considered the situation a resounding success in stopping the drug flow directly at the source.⁷²

A final indicator in this declaration of war is shown in funding level increases to wage it. Approximately \$6 million was allocated for drug enforcement in the late 1960s. This number went to \$43 million in 1970 and grew to \$321 million by 1975. Interestingly, although Nixon declared the war on drugs, he is also credited with declaring victory and investing a larger share of funds to demand reduction. After his re-election, in 1973 Nixon indicated the shift in strategy and focus when he stated, “We have turned the corner on drug addiction in the United States.”⁷³ Regardless of this declaration, agencies continued to operate and funding continued to grow. The Ford and Carter presidencies would place focus in other areas without appreciably altering the policies Nixon had put in motion.⁷⁴ They would also begin to shift funding balances between supply and demand reductions back towards supply. The balance in 1973 was the peak of spending for demand reduction at 70 percent despite the foreign policy and supply reduction strategies of Nixon. By the end of the Carter administration, supply/demand would be at 57/43 percent respectively.⁷⁵

E. RENEWAL OF THE “WAR” WITH REAGAN AND BUSH

Shifts in domestic use patterns during the late 1970s and early 1980s led to the rise and widespread use of cocaine. The Ford and Carter administrations had toned down the emphasis on the drug war but also continued to expand funds, which led to a figure of \$855 million by 1981.⁷⁶ During president Ronald Reagan’s first year in office, he re-

⁷² McWilliams, “Through the Past Darkly,” 21; Bertram et al., *Drug War Politics*, 107.

⁷³ Quoted in Bertram et al., *Drug War Politics*, 107–108.

⁷⁴ Bertram et al., *Drug War Politics*, 107–108.

⁷⁵ Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 6–7.

⁷⁶ Bertram et al., *Drug War Politics*, 110.

launched the “War on Drugs,” stating, “We have taken down the surrender flag and run up the battle flag. And we’re going to win the war on drugs.”⁷⁷ A significant number of laws and acts were passed that consolidated federal drug enforcement agencies, drafted federal intelligence assets into the efforts, and paved the way for military involvement in trafficking enforcement through additions to the Posse Comitatus Act. Drug War Politics states, “Over the next twelve years the drug war escalated as never before, with budgets for drug law enforcement surging from \$855 million to more than \$7.8 billion in 1993.”⁷⁸

President Reagan presented his war on drugs as a national security priority. The slogan of the times was “zero tolerance” leading to shifts in both domestic and foreign policy.⁷⁹ The First Lady, Nancy Reagan, led the media and school system campaign against drug use and abuse with the slogan, “Just say No.”⁸⁰ The 1980s were filled with ads designed to increase public awareness of the political campaign to eradicate drug use and abuse. In 1986, President Reagan signed the Anti-Drug Abuse Act that introduced increased domestic penalties along with new approaches to enforcement that included Armed Forces support of civilian agencies. The official title of the bill presented a basic overview of sweeping changes that were contained.

A bill to strengthen Federal efforts to encourage foreign cooperation in eradicating illicit drug crops and in halting international drug traffic, to improve enforcement of Federal drug laws and enhance interdiction of illicit drug shipments, to provide strong Federal leadership in establishing effective drug abuse prevention and education programs, to expand Federal support for drug abuse treatment and rehabilitation efforts, and for other purposes.⁸¹

The actual bill as enacted contained enough provisions to include 33 short titles. Some of these titles included forfeiture of assets, career criminal enforcement, maritime

⁷⁷ Quoted in Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 7.

⁷⁸ Bertram et al., *Drug War Politics*, 110.

⁷⁹ Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 7.

⁸⁰ Bruce Michael Bagley, “US Foreign Policy and the War on Drugs: Analysis of a Policy Failure,” *Journal of Interamerican Studies and World Affairs* 30, no. 2 (1988): 189.

⁸¹ *Anti-Drug Abuse Act of 1986*. HR 5729. 99th Cong.

drug law enforcement, import and export penalties, and money laundering control.⁸² Supply reduction took on a renewed focus leading to a balance shift of 70 percent of all funding aimed at supply eradication from source countries verses demand reduction.⁸³ This funding shift was less obvious to the American public based on the prominent domestic enforcement and treatment ad campaign message. South America was a specific focus in executing foreign policy on drug control in the 1980s. A system of federal certification was introduced that effectively terminated aid funding to any country not deemed in compliance with U.S. efforts on source eradication.⁸⁴

President George H.W. Bush further intensified the war on drugs. During the Reagan presidency, despite an increase of funding to \$6.4 billion, drugs were more widespread, available, and cheaper by 1989.⁸⁵ In response to the magnitude of the situation, Bush used his first televised national address to declare an “assault on all fronts” in order to combat the “gravest national threat facing the nation.”⁸⁶ President Bush was the Vice President under Reagan and had been given the task of expanding control through the military and intelligence communities in the early 1980s. Florida was a primary entry point for the flow of narcotics from the south. In response, The Vice Presidents Task Force on South Florida was created to combine the efforts of FBI, Customs, IRS, ATF, DEA, Army, and Navy.⁸⁷ When Bush took office in 1989, he expanded Reagan’s efforts and took them in a new direction. Source elimination, using military forces of the U.S. and Latin American nations, along with economic aid would become central to foreign policy priorities in the region. The announcement of the “Andean Strategy” in 1989 would put in motion Bush’s concept, “The Logic is simple.

⁸² Ibid.

⁸³ Washington Office on Latin America, *Clear and Present Dangers: The U.S. Military and the War on Drugs in the Andes* (Washington: WOLA, 1991), 7; Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 7.

⁸⁴ Buxton, *The Historical Foundations of the Narcotic Drug Control Regime*, 25.

⁸⁵ Washington Office on Latin America, *Clear and Present Dangers*, 6; Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 8.

⁸⁶ Quoted in Bertram et al., *Drug War Politics*, 114.

⁸⁷ Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 8.

The cheapest way to eradicate narcotics is to destroy them at their source....We need to wipe out crops wherever they are grown and take out labs wherever they exist.”⁸⁸ Military expenditures on drug enforcement grew from \$357 million in 1989 to \$1 billion by 1992.⁸⁹ In 1989, President Bush signed National Security Directive 18 that “directed the Secretary of Defense to redefine the Pentagon’s mission to include counter narcotics as one of its core priorities.”⁹⁰ The combination of the Andean Strategy and NSD 18 solidified the foreign policy approach to the war.

F. THE STATUS QUO AND SUBTLE SHIFTS WITH CLINTON, GEORGE W. BUSH, AND OBAMA

The large scale drug war intensification efforts of the 1980s firmly entrenched funding, concepts, and norms of anti-drug efforts in public and policy circles. Bill Clinton entered office with various expectations that he would forge a moderate path with the potential for drug policy reform. Clinton had indicated that downscaling the high profile drug war was on his agenda and that treatment and prevention should be a primary focus.⁹¹ Like his statement that he tried marijuana but did not inhale, the message Clinton continued to send over his tenure was mixed and only included minimal efforts to create real change. Clinton’s primary challenge came from an unwillingness to look soft on drugs and crime as well as Congressional rejection of various proposed budgets and organizational downsizing.⁹² Several of the concepts that currently hold promise in changing drug control policy today were on the minds of individuals in Clinton’s administration. For example, Lee Brown, an early Clinton appointee as Drug Czar, stated, “You won’t hear us using the metaphor ‘drug war.’ We should help those who need help and arrest those who are trafficking in drugs. But I don’t think we should declare war

⁸⁸ Quoted in Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 8.

⁸⁹ Bertram et al., *Drug War Politics*, 115.

⁹⁰ Clare Ribando Seelke et al., *Latin America and the Caribbean: Illicit Drug Trafficking and the U.S. Counterdrug Programs*, 11.

⁹¹ Bertram et al., *Drug War Politics*, 116–117.

⁹² Ibid., 118–119.

against our own people.”⁹³ The Obama administration follows this example and currently avoids using the term “drug war” for discussion of drug control policy. Early in Clinton’s first term, Attorney General Janet Reno was critical of U.S. drug policy and advocated for changes to the justice system that focused on decriminalization and treatment for non-violent addicts.⁹⁴ Health care reform was also proposed in an attempt to address inadequate substance abuse treatment availability.

Each of these attempts to shift the debate and enact policy reform met significant conservative resistance and ultimately led Clinton to de-emphasize drug control issues. *Drug War Politics* states, “Drug reform under Clinton failed because he was unwilling to pay the political costs of doing battle; but such costs would be high for any president—and this makes the hope for presidentially led reform very slim.”⁹⁵ In the absence of significant policy changes during the Clinton presidency, the existing narco-enforcement complex continued to escalate a war of criminalization and foreign supply eradication throughout the 1990s. Expenditures for drug control and enforcement during Clinton’s time in office climbed from \$12.1 billion to \$19.2 billion annually with 70 percent aimed at supply reduction in 2001.⁹⁶ In the middle of this continued federal enforcement trajectory, California passed Proposition 215 in 1996. This proposition effectively set in motion the expansion of state medical marijuana laws that continue to remain in direct conflict with the federal Controlled Substances Act.

Admittedly, the George W. Bush administration had prominent issues of terrorism and wars in Iraq and Afghanistan as priorities. Initial criticisms of Clinton’s failures to make progress on fighting drug abuse faded and the federal status quo of enforcement and eradication as primary solutions continued while the administration focused on other wars. Bush also spoke of treatment, prevention, and demand reduction as possible winning strategies. Although these strategies were discussed, funding continued to

⁹³ Quoted in Bertram et al., *Drug War Politics*, 118.

⁹⁴ Bertram et al., *Drug War Politics*, 119.

⁹⁵ Ibid., 125.

⁹⁶ Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 12.

increase while supply-demand ratios remained relatively static. Over the eight-year period of George W. Bush's presidency, \$200 billion were allocated to the drug war with supply reduction remaining at just below 70 percent.⁹⁷ One significant shift in justification for the war on drugs did occur in the post 9/11 security environment. In a 2003 testimony to the Senate Judiciary Committee, Steven McCraw, Assistant Director in the FBI Office of Intelligence, linked terrorism and drug trafficking.

In framing the issue, the Committee astutely recognizes these links and the threat they present to the American people. That is why all aspects of the terrorist enterprise including funding and support must be attacked. The criminal nexus to terrorism including drug trafficking is why our local, state, and federal law enforcement partners throughout the U.S. and the world are essential to combating global terrorism.⁹⁸

Despite a stated understanding that demand reduction was likely to produce greater results in the drug war, the link to terrorism brought a renewed focus on partnerships with local, state, and federal law enforcement as the primary method to combat entwined drug trafficking profits and terrorism. Even with an eight year investment of \$200 billion, former ONDCP director of planning and budget, John Carnevale, states the Bush administration “failed to achieve results with regard to its goal for adult drug use or in key outcome areas....Eight years were wasted.”⁹⁹

How does marijuana play into those “eight wasted years?” Crossing from Bush into the Obama administration, the American Civil Liberties Union (ACLU) compiled information from the FBI Uniform Crime Reporting Program and the U.S. Census to produce a report on marijuana arrest rates from 2001 to 2010. Of the many findings, several statistics stand out. First, overall marijuana arrest rates rose steadily to the point

⁹⁷ Ibid., 13.

⁹⁸ U.S. Federal Bureau of Investigation, *Steven C. McCraw testimony before the Senate Judiciary Committee*, May 20, 2003, accessed February 3, 2014, <http://www.fbi.gov/news/testimony/international-drug-trafficking-and-terrorism>.

⁹⁹ Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 13–14; John Carnevale, “Restoring the Integrity of the Office of National Drug Control Policy,” Committee on Oversight and Government Reform, May 19, 2009, accessed February 1, 2014, <http://oversight.house.gov/wp-content/uploads/2012/01/20090519Carnevale.pdf>.

where 2010 had 100,000 more arrests than were conducted in 2001.¹⁰⁰ In that period, approximately eight million arrests were made involving marijuana. Second, of those arrests, 88 percent were simply for marijuana possession.¹⁰¹ Third, marijuana arrests accounted for 52 percent of all drug arrests in America.¹⁰² This equates to 46 percent of all drug related arrests attributed to simple marijuana possession.¹⁰³ Lastly, blacks were 3.73 times more likely to be arrested for marijuana verses whites despite similar use rates of 14 and 12 percent respectively.¹⁰⁴ Even without the racial disparities, the war on drugs is a complicated and controversial issue. With statistics of marijuana accounting for roughly half of all recent drug related arrests, understanding the entwined nature of marijuana and narcotics enforcement continues to increase in significance.

The Obama administration publicly states recognition of drug addiction as a disease that requires balanced policies to effectively address. The 2013 National Drug Control Strategy references that in 2010 the “Administration charted a ‘third way’ in drug policy, a path that rejects the opposing extremes of legalization or a law enforcement-only ‘war on drugs.’”¹⁰⁵ Actions of advancing criminal justice reform through drug treatment courts, promoting human rights and evidence based drug policy, funding of community coalitions, and capitalizing on research conducted by scholars on addiction are given in support of modest goals of 10–15 percent reduction in various drug related areas by 2015.¹⁰⁶

One hundred years after the passage of the Harrison Narcotics Tax Act, which signaled a shift in mindset from addiction perceived as a disease to that of a criminal act, the Obama administration is effectively reversing the discussion on how America should

¹⁰⁰ American Civil Liberties Union, *The War on Marijuana in Black and White*, June 2013, 14, <https://www.aclu.org/criminal-law-reform/war-marijuana-black-and-white-report>.

¹⁰¹ Ibid., 14.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Ibid., 17–21.

¹⁰⁵ The White House, *National Drug Control Strategy 2013*, Office of National Drug Control Strategy, 1–2, <http://www.whitehouse.gov/ondcp/2013-national-drug-control-strategy>.

¹⁰⁶ Ibid., 2–3.

view the drug problem. Although discussion on alternative approaches is occurring and the stance appears to be changing, Michael Walther points out that only changes of accounting methodology are responsible for the appearance of subtle shifts of funding towards demand. He states that in reality policies are generally consistent across the Clinton, Bush, and Obama administrations with “prevention and treatment remain[ing] severely underfunded, while law enforcement and incarceration continue to dominate our national drug strategy.”¹⁰⁷

G. CONCLUSION

The answer to the original question, what led the U.S. to declare a “War on Drugs” to the extent that it became a U.S. domestic and foreign policy priority requiring annual expenditures of billions of dollars?, has a long list of contributors. Actions of multiple government officials and policy makers ultimately culminated in a combination of domestic attitudes and policy choices that led towards action in the foreign policy arena. The uncertainty of what action to take with regard to opium in the Philippines at the turn of the twentieth century began U.S. advocacy for drug control in the international sphere. Despite U.S. leadership and organization of the Shanghai Opium Commission and subsequent International Opium Convention at The Hague, neither of these events created large shifts in specific U.S. policy. The international agreements would do more to shape subsequent domestic policy priorities than that of foreign policy. Although there had been a long history of U.S. foreign policy actions with respect to drug control, President Nixon is credited with declaring the “war” and shifting emphasis towards supply-side eradication. This shift towards elimination at the source fundamentally altered foreign policy relationships between the U.S. and any nation that produced marijuana and any other narcotics trafficked to the American public. The concept of elimination at the source continued with varying emphasis until the senior Bush administration made direct intervention in source countries of Latin America a top national security priority. Drug use, abuse, and addiction continue today, as does the

¹⁰⁷ Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 15.

debate on how to mitigate the damaging effects on society. As of 2013, the Obama administration has requested \$25.4 billion for FY2014 federal drug control.¹⁰⁸ It is important for policy makers to look to the past and understand what aspects of drug control were cost effective, benefited society, and minimized unintended consequences as future domestic and foreign policy is formed on drug control. This importance continues to take on greater significance with the debate over marijuana as U.S. state and international leaders question and effectively turn away from federal policy through support of legislative changes that conflict with historical U.S. federal and international policy.

¹⁰⁸ Liana Sun Wyler, *International Drug Control Policy: Background and U.S. Responses*.

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III. THE FALL AND RISE OF MEDICAL AND RECREATIONAL MARIJUANA

A. FROM MEDICINE TO AN ILLEGAL DRUG

The concept of using marijuana as a medicine is a mixture of fact and legend with a 5000-year history. The year 2737 B.C. is the earliest historical reference that cites emperor Shen Nung as including the marijuana plant in his pharmacopeia for medicinal use.¹⁰⁹ Accounts of marijuana use throughout Asia and the Middle East, for a large number of medical and spiritual uses, fill the historical record until the modern day.¹¹⁰ What is interesting about marijuana is both the long record it has for a multitude of ailments, as well as the geopolitical controversy surrounding it. Is it a medicine or a recreational drug, and how should it be regulated? The answer to these questions has varied and is still being worked out around the globe.

The United States has a long history with marijuana, but early America's primary use of the plant was industrial in nature for products such as rope and cloth.¹¹¹ The peak of industrial marijuana as a fiber product, commonly referred to as American hemp, occurred in the middle of the 1800s and was eventually replaced by cotton, Indian jute, and timber.¹¹² Early widespread use of the marijuana plant led its establishment and wild growth throughout the nation. As a medicine, it was included in the U.S. pharmacopoeia in 1870 with, "over one hundred articles recommending [marijuana] use in medical journals between 1840 and 1900."¹¹³ The first indications of controversy started as the United States began a major social, industrial, and urban transition. Waves of immigrants began to flow into America's borders with their own religions, languages, and customs.¹¹⁴ Erich Goode in *Marijuana* states,

¹⁰⁹ Goode, *Marijuana*, 6.

¹¹⁰ Ibid.

¹¹¹ Bonnie and Whitebread, *The Marihuana Conviction*, 1.

¹¹² Ibid., 3.

¹¹³ Ibid., 4.

¹¹⁴ Ibid., 10.

At the turn of the twentieth century, marijuana use in the United States for other than medicinal purposes was almost unknown. About 1910, Mexican immigrants brought marijuana into Texas and California and from there it seems to have made its way very quickly to New Orleans, where its use was established among Negroes....From there it spread to the North...where it was introduced to whites on a large scale as a result of contact with Negroes in lower-class, racially mixed neighborhoods.¹¹⁵

The association with immigrants and the lower class began a wave of change to marijuana's legal status. The multi-scalar drive to outlaw marijuana use started at the local level, advanced to the state level, and eventually progressed nationally and internationally. One early example of local enforcement that resulted in far reaching policy began in 1914 El Paso, "The deputy sheriff decided Mexicans should no longer be permitted to bring any more 'loco weed' across the Rio Grande."¹¹⁶ Local laws were passed to prohibit marijuana with the recommendations passed to federal representatives. See Figure 2 for Treasury Decision 35719, which set in motion illegal smuggling charges for migrants crossing the U.S. Mexico border with marijuana.

¹¹⁵ Goode, *Marijuana*, 7.

¹¹⁶ Bonnie and Whitebread, *The Marihuana Conviction*, 53.

(T. D. 35719.)

Drugs.

Dried flowering tops, pistillate plants of *Cannabis sativa* Linné. Importation thereof denied if intended for other than medicinal purposes. (Sec. 11, food and drugs act of 1906.)

TREASURY DEPARTMENT, September 25, 1915.

To collectors and other officers of the customs:

The Secretary of Agriculture advises the department, under date of the 20th instant, that some importations of the drug known as the dried flowering tops of the pistillate plants of *Cannabis sativa* Linné are being used for purposes other than in the preparation of medicines, and that, unless used in medicinal preparations, this drug is believed to be injurious to health. He, therefore, recommends that appropriate instructions be issued to customs officers pursuant to the provisions of section 11 of the food and drugs act approved June 30, 1906, to refuse admission to the said drug unless it is to be used for medicinal purposes.

Figure 2. Treasury Department decision to restrict marijuana (cannabis) importation¹¹⁷

Individual states began prohibiting marijuana in a similar fashion to earlier laws that outlawed opium and other narcotics as a method to purge the dens, streets, cities, and states of the dope fiend menace.¹¹⁸ Every state had passed laws on marijuana by the time the federal government passed The Marijuana Tax Act, but the state legislation was widely varied. Leading up to the federal Act was creation of a bill designed for adoption of state legislatures called The Uniform Narcotic Drug Act. Lack of uniformity and weak state enforcement led to a proposal to create anti-narcotic regulation designed for state legislatures to streamline inconsistencies.¹¹⁹ The majority of states did pass the Uniform Narcotic Drug Act and its associated marijuana provision. The buildup of legislation from the local level eventually led to changes at the state and federal level to prohibit and criminalize marijuana. The process is now repeating itself in reverse as states pass

¹¹⁷ U.S. Treasury Department, *Treasury Decisions Under Customs and Other Laws: Vol 29 July-December, 1915* (Washington DC: Government Printing Office, 1916), 257.

¹¹⁸ Bonnie and Whitebread, *The Marihuana Conviction*, 53.

¹¹⁹ Ibid., 79–80.

legislation decriminalizing and permitting marijuana for various uses. The Pew Research center compiled a map showing 50 state 2013 marijuana laws along with a list of ballot initiatives that have been recently rejected. Many of these rejected initiatives may be reintroduced in the future. See Figure 3.

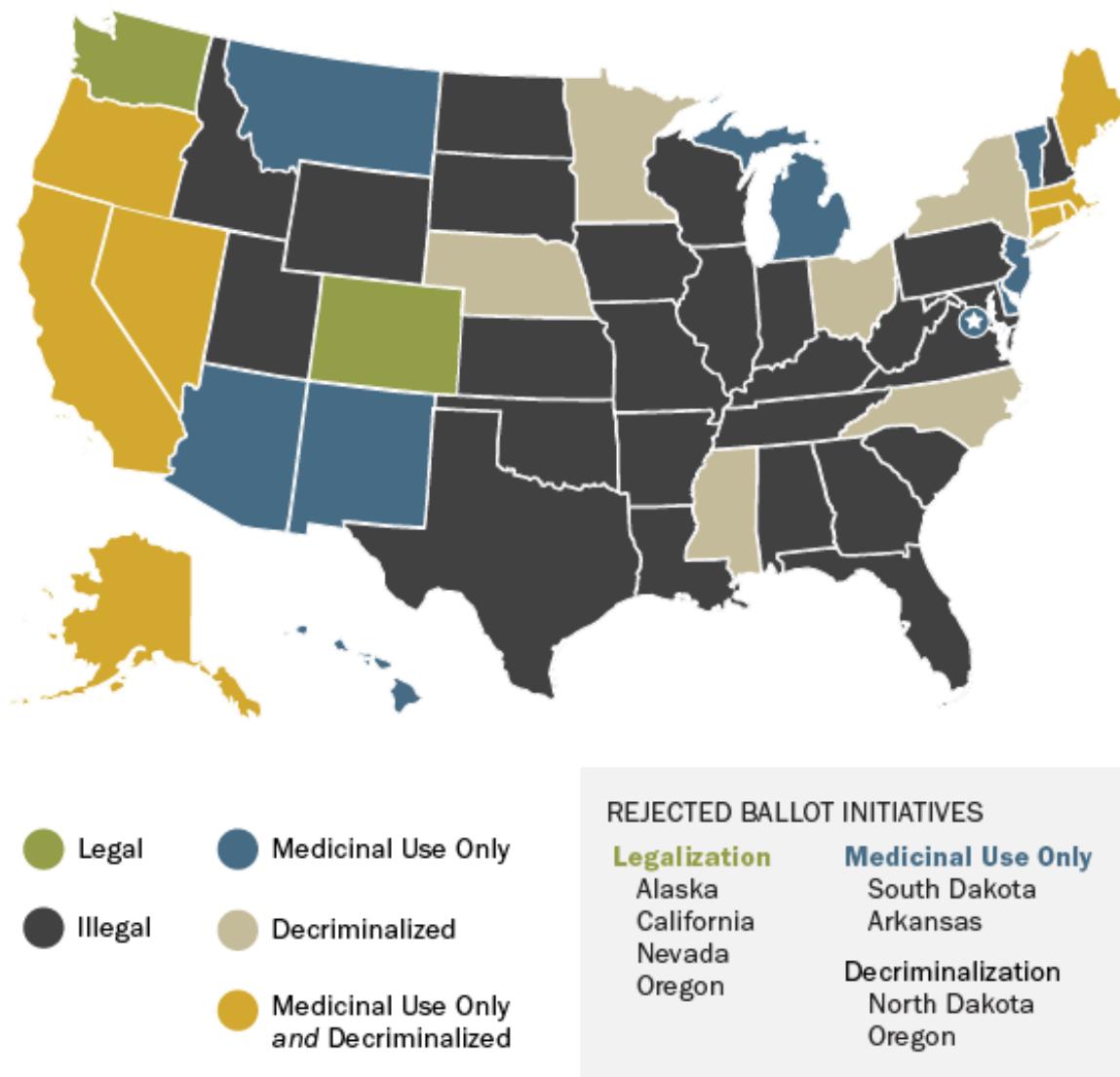


Figure 3. Fifty state marijuana laws in 2013.¹²⁰

¹²⁰ Pew Research Center, "Public Opinion and Marijuana: Shifting Attitudes, Events and Laws," April 4, 2013, <http://www.people-press.org/2013/04/04/marijuana-timeline/>.

B. MEDICAL MARIJUANA

Support for the medical use of marijuana grew at the local level over a number of years before any real change occurred. In 1991, Proposition P, a San Francisco ballot initiative to urge the State of California and the California Medical Association to allow marijuana for medical purposes, passed with an 80 percent approval rate.¹²¹ Additional measures were passed in 1994 and 1995, each of which were vetoed by California Governor Pete Wilson. Although public support had grown, the approach of urging legislators to initiate change had proved unworkable. Advocates for change turned to raising enough signatures to put legalization directly to the voters.¹²² California passed Proposition 215 in November of 1996 with a 56 percent approval rate.¹²³ Partial text of the proposition states:

11362.5. (a) This section shall be known and may be cited as the Compassionate Use Act of 1996.

(b) (1) The people of the State of California hereby find and declare that the purposes of the Compassionate Use Act of 1996 are as follows:

(A) To ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where that medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.

(B) To ensure that patients and their primary caregivers who obtain and use marijuana for medical purposes upon the recommendation of a physician are not subject to criminal prosecution or sanction.

¹²¹ Stanford University, "Medical Marijuana Policy in the United States," May 15, 2012, <https://www.stanford.edu/group/hopes/cgi-bin/wordpress/2012/05/medical-marijuana-policy-in-the-united-states/>.

¹²² Ibid.

¹²³ George J. Annas, "Refer Madness: The Federal Response to California's Medical-Marijuana Law," *New England Journal of Medicine* 337, no. 6 (August 1997), <http://tfy.drugsense.org/nejm0897.htm>.

(C) To encourage the federal and state governments to implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana.¹²⁴

This action marked a turning point in a long-standing debate as to whether marijuana was believed, by the average voter, to have medicinal use. The federal government maintains marijuana does not have any medical use, yet the voters of California, and every other state that has passed medical initiatives since proposition 215, say otherwise (although still subject to federal law enforcement). The debate can be fierce with individuals on both sides believing the other is completely wrong. It is difficult to determine the exact trajectory of medical marijuana's future with such intense conflict and debate. However, California has not been the only state to pass a medical marijuana initiative. See Table 2.

¹²⁴ CAL. HSC. CODE §11362.5.

State	Year Passed	How Passed (Yes Vote)	Fee	Possession Limit	Accepts other states' registry ID cards?
1. Alaska	1998	Ballot Measure 8 (58%)	\$25/\$20	1 oz usable; 6 plants (3 mature, 3 immature)	unknown
2. Arizona	2010	Proposition 203 (50.13%)	\$150/\$75	2.5 oz usable; 0-12 plants ²	Yes
3. California	1996	Proposition 215 (56%)	\$66/\$33	8 oz usable; 6 mature or 12 immature plants ⁴	No
4. Colorado	2000	Ballot Amendment 20 (54%) House Bill 5389 (96-51 House, 21-13 Senate)	\$15	2 oz usable; 6 plants (3 mature, 3 immature)	No
5. Connecticut	2012	TBD		One-month supply (exact amount to be determined)	No
6. DC	2010	Amendment Act B18-622 (13-0 vote) Senate Bill 17 (27-14 House, 17-4 Senate)	\$100/\$25	2 oz dried; limits on other forms to be determined	No
7. Delaware	2011	\$125		6 oz usable	Yes
8. Hawaii	2000	Senate Bill 862 (32-18 House; 13-12 Senate)	\$25	3 oz usable; 7 plants (3 mature, 4 immature)	No
9. Illinois	2013	House Bill 1 (61-57 House; 35-21 Senate)	TBD	2.5 ounces of usable cannabis during a period of 14 days	No
10. Maine	1999	Ballot Question 2 (61%)	No fee	2.5 oz usable; 6 plants	Yes
11. Massachusetts	2012	Ballot Question 3 (63%)	TBD	Sixty day supply for personal medical use	unknown
12. Michigan	2008	Proposal 1 (63%)	\$100/\$25	2.5 oz usable; 12 plants	Yes
13. Montana	2004	Initiative 148 (62%)	\$25/\$10	1 oz usable; 4 plants (mature); 12 seedlings	No
14. Nevada	2000	Ballot Question 9 (65%) House Bill 573 (284-66 House; 18-6 Senate)	\$200	1 oz usable; 7 plants (3 mature, 4 immature)	Yes
15. New Hampshire	2013	TBD		Two ounces of usable cannabis during a 10-day period	Yes
16. New Jersey	2010	Senate Bill 119 (48-14 House; 25-13 Senate) Senate Bill 523 (36-31 House; 32-3 Senate)	\$200/\$20	2 oz usable	No
17. New Mexico	2007	\$0		6 oz usable; 16 plants (4 mature, 12 immature)	No
18. Oregon	1998	Ballot Measure 67 (55%)	\$200/\$100 ⁰	24 oz usable; 24 plants (6 mature, 18 immature)	No
19. Rhode Island	2006	Senate Bill 0710 (52-10 House; 33-1 Senate)	\$75/\$10	2.5 oz usable; 12 plants	Yes
20. Vermont	2004	Senate Bill 76 (22-7) HB 645 (82-59)	\$50	2 oz usable; 9 plants (2 mature, 7 immature)	No
21. Washington	1998	Initiative 692 (59%)		24 oz usable; 15 plants	No

Table 2. Summary of state medical marijuana laws¹²⁵

Since proposition 215 in 1996, state after state has chosen to enact medical marijuana laws and reduce penalties for possession and use of marijuana. If voters were simply ignorant to the dangers of marijuana, as maintained by the federal government, the significant nationwide expansion of state laws, which have moved away from the federal position, most likely would not have occurred. A 2010 Pew Research poll showed

¹²⁵ “20 Legal Medical Marijuana States and DC,” last modified February 26, 2014, <http://medicalmarijuana.procon.org/view.resource.php?resourceID=000881>. Additional detailed information on each state law along with links to information on ballot measures, bills, fees, and source information can be accessed at the *ProCon.org* website.

that 73 percent of Americans supported the legalization of medical marijuana.¹²⁶ As of 2013, a *Fox News* poll shows support has increased to 85 percent.¹²⁷ Currently, there are 15 additional states that have pending legislation or ballot initiatives to legalize medical marijuana.¹²⁸ Although drug laws tend to take lengthy amounts of time to achieve homogeneous levels of change, the advance in state level medical marijuana legalization demonstrates a significant disconnect between marijuana's federal and local perceptions.

C. RECREATIONAL MARIJUANA

A large amount of the debate surrounding marijuana has been focused on compassionate use for various medical issues. Considering marijuana's popularly accepted ability to deal with pain and disease, it may not be surprising that medicinal use has gained support. The use of marijuana for recreational purposes seemed to be on a much more difficult path towards legalization. Many reports surrounding the marijuana debate would contain some reference to the fact that no state or nation in the world had passed any law legalizing recreational use of marijuana. November of 2012 marked another turning point for marijuana. The states of Washington and Colorado both passed laws to legalize adult recreational use. (The nation of Uruguay also recently passed recreational legalization. This will be discussed in the next chapter). These laws are distinct and separate from medical marijuana laws in each state.

1. Washington

The production, possession, delivery, distribution, and sale of marijuana in accordance with the provisions of [i502] and the rules adopted to

¹²⁶ Pew Research Center, "Public Support for Legalizing Medical Marijuana," April 1, 2010, <http://www.people-press.org/2010/04/01/public-support-for-legalizing-medical-marijuana/>.

¹²⁷ *Fox News*, "85 percent of voters favor medical marijuana," May 1, 2013, <http://www.foxnews.com/politics/interactive/2013/05/01/fox-news-poll-85-percent-voters-favor-medical-marijuana/>.

¹²⁸ "15 States with Pending Legislation to Legalize Medical Marijuana," last modified March 13, 2014, <http://medicalmarijuana.procon.org/view.resource.php?resourceID=002481>.

implement and enforce it, by a validly licensed marijuana producer, shall not be a criminal or civil offense under Washington state law.¹²⁹

Washington Initiative 502 amends state law to allow adults 21 years and older to possess one ounce of usable marijuana, 16 ounces of marijuana infused product in solid form, or 72 ounces of marijuana infused product in liquid form.¹³⁰ The state Liquor Control Board was designated the agency responsible to administer a regulatory system that licenses production, processing, and retail sales.¹³¹ The initiative outlines a strict licensing scheme designed to ensure retention of regulatory control by the state. Taxes will be 25 percent at each tier of production, processing, and sale for a total of 75 percent. These taxes will be deposited in a fund that will primarily distribute to social and health services.¹³² Washington residents are not allowed to home-grow their own recreational marijuana supply and are limited to purchasing it from licensed retail outlets expected to open for business in June or July of 2014.¹³³

2. Colorado

In the interest of the efficient use of law enforcement resources, enhancing revenue for public purposes, and individual freedom, the people of the state of Colorado find and declare that the use of marijuana should be legal for persons twenty-one years of age or older and taxed in a manner similar to alcohol.¹³⁴

Colorado voters passed Amendment 64 at the same time Washington's Initiative 502 was passed. Amendment 64 ultimately added a new Section 16 to Article 18 of Colorado's constitution. The laws are similar in that they are intended for adults of 21 years or older, possession is limited to one ounce or less, driving under the influence of

¹²⁹ Washington Initiative 502 § 4, amending RCW 69.50.4013 and 2003 c53 s334, available at http://sos.wa.gov/_assets/elections/initiatives/i502.pdf.

¹³⁰ Washington Initiative 502 § 20.

¹³¹ Ibid., § 4.

¹³² Ibid., § 26–28.

¹³³ ABC News, “First Pot Business License Issued in Washington,” March 5, 2014, <http://abcnews.go.com/US/wireStory/washington-state-issues-legal-pot-license-22786308>.

¹³⁴ Colo. Const. Art. XVIII, § 16 (2013).

marijuana is prohibited, the regulation scheme is designed to be similar to alcohol, and medical marijuana regulation remains unaffected. The most significant difference is that Colorado residents are allowed to grow, process, and transport six marijuana plants, with three or fewer being mature.¹³⁵ This home-grow provision allows residents access to marijuana even if they do not live in an area with retail outlets. The Colorado and Washington tax structures are also different with regulation responsibility vested in the Department of Revenue. Currently, Colorado is following a “vertical integration” model, which essentially requires one business to undertake cultivation, production, and sales. Colorado’s excise tax is set to 15 percent. After state, local, and a 15 percent excise tax is added, Denver consumers pay in the neighborhood of a 29 percent tax rate.¹³⁶ Retail sales of recreational marijuana in the month of January were \$14 million with slightly over \$2 million collected in sales tax.¹³⁷

D. CHALLENGES FOR BUSINESS

The current federal status of marijuana creates several problems for legitimate state marijuana business owners. As long as marijuana remains illegal at the federal level, it is difficult to rely on a consistent stance from federal prosecutors or comply with federal banking regulation.

Three memorandums have been released from the U.S. Department of Justice concerning federal enforcement against business owners involved in state legal marijuana. In 2009, Deputy Attorney General David Ogden released a memo stating, “As a general matter, pursuit of these priorities should not focus federal resources in your States on individuals whose actions are in clear and unambiguous compliance with

¹³⁵ Ibid., § 16.

¹³⁶ Joseph Henchman, “Colorado Begins Legal Marijuana Sales, Collecting Marijuana Tax,” *Tax Foundation Blog*, January 1, 2014, <http://taxfoundation.org/blog/colorado-begins-legal-marijuana-sales-collecting-marijuana-tax>.

¹³⁷ John Ingold, “Colorado saw \$2 million in recreational marijuana taxes in January,” *The Denver Post*, March 10, 2014, http://www.denverpost.com/news/ci_25314108/colorado-saw-2-million-recreational-marijuana-taxes-january.

existing state laws providing for the medical use of marijuana.”¹³⁸ Although no federal law had changed, this memo implied that the federal government was tolerant of medical marijuana businesses as long as they fully complied with state law and did not violate the federal government’s core priorities. In 2011, that stance was reversed. The new Deputy Attorney General, James M. Cole, released an update to the Ogden memo stating, “The Ogden Memorandum was never intended to shield such activities from federal enforcement action and prosecution, even where those activities purport to comply with state law.”¹³⁹ After Colorado and Washington passed laws legalizing recreational marijuana, the federal government waited 9 months before addressing the issue. In August 2013, Deputy Attorney General Cole released another memorandum that essentially reversed the federal government’s stance once again. The memo continues to focus on the federal government’s core priorities, temporarily defers its right to challenge recreational legalization measures, and gives guidance to its prosecutors stating, “prosecutors should continue to review marijuana cases on a case-by-case basis and weigh all available information and evidence, including, but not limited to, whether the operation is demonstrably in compliance with a strong and effective state regulatory system.”¹⁴⁰

In addition to the back and forth threat of federal prosecution, marijuana business owners face complications with banking. Banks are federally regulated and state regulated marijuana businesses are operating outside of federal guidelines. This situation forces marijuana businesses to operate on a cash only basis unless they can convince a bank to take the risk of working with them. The 2011 Cole memo states, “Those who engage in transactions involving the proceeds of such activity may also be in violation of

¹³⁸ David W. Ogden, *Memorandum for Selected United States Attorneys: Investigations and Prosecutions in States Authorizing the Medical Use of Marijuana*, October 19, 2009, U.S. Department of Justice, <http://www.justice.gov/opa/documents/medical-marijuana.pdf>.

¹³⁹ James M. Cole, *Memorandum for all United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use* June 29, 2011, U.S. Department of Justice, <http://www.justice.gov/oip/docs/dag-guidance-2011-for-medical-marijuana-use.pdf>.

¹⁴⁰ James M. Cole, *Memorandum for all United States Attorneys: Guidance Regarding Marijuana Enforcement*, August 29, 2013, U.S. Department of Justice, <http://www.justice.gov/iso/opa/resources/3052013829132756857467.pdf>.

federal money laundering statutes and other federal financial laws.”¹⁴¹ Considering Colorado conducted \$14 million in marijuana sales for the month of January alone, it is not difficult to imagine the security concerns that arise from inability to use a banking service. That is a lot of cash. In an effort to address the problem, the DOJ and Treasury Department worked together to provide guidance for banks working with state licensed marijuana businesses. The document reiterates the 2013 Cole memo core priorities and seeks to provide clarification on how to proceed if they choose to do business with the marijuana industry.¹⁴² Unfortunately, without congressional action to change the federal laws, banks are put in a difficult position. *CNN* quotes the CEO and president of American Bankers Association, Frank Keating, as saying:

While we appreciate the efforts by the Department of Justice and FinCEN, [simple] guidance or regulation doesn’t alter the underlying challenge for banks. As it stands, possession or distribution of marijuana violates federal law, and banks that provide support for those activities face the risk of prosecution and assorted sanctions.¹⁴³

Although state laws have continued to progress towards increased legalization, the conflict between federal and state laws remains. This situation puts legitimate business owners at risk and creates a great deal of confusion for Americans.

E. INTERACTION OF FEDERAL AND STATE LAW

Supreme Court Justice Louis Brandeis famously praised the division of sovereign power included within America’s constitutional structure for its capacity to encourage states to “serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.” This legislative freedom is constrained, however, by various constitutional

¹⁴¹ Cole, *Memorandum for all United States Attorneys: Guidance Regarding the Ogden Memo in Jurisdictions Seeking to Authorize Marijuana for Medical Use* June 29,2011.

¹⁴² Financial Crimes Enforcement Network, *BSA Expectations Regarding Marijuana Related Businesses*, February 14, 2014, Department of the Treasury, http://www.fincen.gov/statutes_regs/guidance/pdf/FIN-2014-G001.pdf.

¹⁴³ Evan Perez, “Banks cleared to accept marijuana business,” *CNN*, February 17, 2014, <http://www.cnn.com/2014/02/14/politics/u-s-marijuana-banks/>.

restrictions....Although simple in theory, the task of determining whether a state law is “in conflict” with federal law can be incredibly complex in practice.¹⁴⁴

Federal law prohibits marijuana and currently considers it amongst the most dangerous drugs in existence. State laws have decriminalized, legalized for medical use, and have now gone as far as legalizing recreational marijuana with a tax structure that puts money into state accounts. In the 1970s, 11 states took steps to make reductions in criminal penalties for small amounts of marijuana.¹⁴⁵ Although these changes to state law reduced the penalties, they did not change marijuana’s federal or state status as an illegal drug. In contrast to simply reducing penalties, current state medical and recreational marijuana laws are in apparent conflict with federal law. It is important to understand how states have managed to progress despite the federal governments steadfast adherence to *a most dangerous of all drugs* Schedule I mindset. Key concepts of congressional supremacy, commandeering, federal resources, federal preemption, and international preemption are outlined in order to explain how the simultaneous legal and illegal status of marijuana continues to exist.¹⁴⁶

1. Supremacy Clause of the Constitution

The American Constitution divides governmental power between the federal government and several state governments. In the event a conflict between federal law and state law, the Supremacy Clause of the Constitution (Article VI, Clause 2) makes it clear that the state policies are subordinate to federal policies. There are, however, important limitations to the doctrine of federal supremacy.¹⁴⁷

¹⁴⁴ Todd Garvey and Brian T. Yeh, *State Legalization of Recreational Marijuana: Selected Legal issues*, CRS Report R43034 (Washington DC: Library of Congress, Congressional Research Service, April 5, 2013), 1.

¹⁴⁵ Rosalie Liccardo Pacula, Jamie F. Chriqui, and Joanna King, *Marijuana Decriminalization: What Does it Mean in the United States?* (Cambridge, MA: National Bureau of Economic Research, 2003), 4.

¹⁴⁶ Detailed legal analysis and the nuances associated with federal and state law regarding marijuana are outside the scope of this thesis and covered in depth by several legal scholars to include Robert Mikos, Todd Grabarsky, and Todd Garvey.

¹⁴⁷ Mikos, *On the Limits of Federal Supremacy*, 1.

The U.S. Constitution states, “The Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made under the Authority of the United States, shall be the supreme Law of the Land.”¹⁴⁸ The clearest understanding from the Supremacy Clause is that state marijuana laws cannot supersede and therefore invalidate federal law. Based on this constitutional language it might appear that federal law would invalidate conflicting state law regarding marijuana. However, intentionally designed limitations on federal powers prevent this straightforward application. In general, the supremacy clause holds true when federal law legalizes an activity and state laws attempt to ban that same activity.¹⁴⁹ In the reverse case, similar to the legal situation surrounding marijuana, federal bans of activity that states either ignore or legalize are complicated by principles of anti-commandeering, simple availability of enforcement power, and preemption.

2. Commandeering

The federal government is free to enact legislation that bans activities such as the cultivation, possession, and distribution of marijuana. It is then free to use federal forces to enforce that ban. The federal government can also encourage states to enact similar laws to that of the federal government. In the case of drug enforcement, states enforce their own laws and often willingly assist the federal government. What the federal government cannot do is require states to enforce federal laws with their own resources. This prevents state officials from being compelled to pay for and administer federal policy. Doing so would constitute federal commandeering and is generally considered unconstitutional.¹⁵⁰

¹⁴⁸ U.S. Const., Art. VI, cl. 2.

¹⁴⁹ Mikos, *On the Limits of Federal Supremacy*, 2.

¹⁵⁰ Todd Garvey, *Medical Marijuana: The Supremacy Clause, Federalism, and the Interplay Between State and Federal Laws*, CRS Report R42398 (Washington DC: Library of Congress, Congressional Research Service, November 9, 2012), 6–7; Grabarsky, “Conflicting Federal and State Medical Marijuana Policies,” 13.

3. Federal Resources

The federal government can encourage states to adopt laws and policies through funding incentives or withholding. A recent successful example of aligning state law to that of federal law was obtained with the Department of Transportation Appropriations Act of FY2001. Any state that failed to adopt a 0.08 blood alcohol content limit was subject to losing federal highway construction funds at a rate of 2 percent with increases of loss compounding for each year of compliance failure.¹⁵¹ Although the federal government could attempt this method with state marijuana laws, the federal government relies primarily on state manpower and resources for drug enforcement.¹⁵² To understand the scope of federal versus local law enforcement, Robert Mikos cites, “Only 1 percent of the roughly 800,000 marijuana cases generated every year are handled by federal authorities.”¹⁵³ In addition, the ratio of DEA to state and local enforcement officers is 1 to 170.¹⁵⁴ The federal government recognizes that partnership in drug enforcement is important to accomplishing federal goals.¹⁵⁵ Erosion of this partnership would likely lead to further negative effects.¹⁵⁶

4. Preemption

Preemption is grounded in the Supremacy Clause. In certain cases, federal law preempts or supersedes state law. The main constraint for the power of preemption is the anti-commandeering principle.¹⁵⁷ Law professor Robert Mikos makes this distinction clear by stating, “Congressional laws blocking state action (preemption) are permissible,

¹⁵¹ National Highway Traffic Safety Administration, “.08 BAC *Illegal per se* Level,” *Traffic Safety Facts 2 no.1* (March 2004), <http://www.nhtsa.gov/people/injury/new-fact-sheet03/fact-sheets04/Laws-08BAC.pdf>.

¹⁵² Mikos, *On the Limits of Federal Supremacy*, 3.

¹⁵³ Ibid.

¹⁵⁴ Stuart Taylor, Jr., *Marijuana Policy and Presidential Leadership: How to Avoid a Federal-State Train Wreck* (Washington, DC: The Brookings Institution, 2013), 3.

¹⁵⁵ Cole, *Memorandum for all United States Attorneys: Guidance Regarding Marijuana Enforcement*, August 29, 2013.

¹⁵⁶ Grabarsky, “Conflicting Federal and State Medical Marijuana Policies,” 16.

¹⁵⁷ Mikos, *On the Limits of Federal Supremacy*, 10.

whereas congressional laws requiring state action (commandeering) are not.”¹⁵⁸ Pertaining to marijuana, the question becomes whether or not the federal Controlled Substances Act (CSA) preempts various state laws regarding medical and recreational marijuana. None of the state laws regarding marijuana require individuals to use marijuana; these state laws reduce the penalties or simply allow it for various uses. Robert Mikos states, “The Supreme Court has never held that Congress could block states from merely allowing some private behavior to occur, even if that behavior is forbidden by Congress.”¹⁵⁹ Additionally, the language of the CSA was written in an attempt to work cooperatively with the states. The federal government recognizes that much of the enforcement of drug laws would occur through state action. The CSA states:

No provision of this subchapter shall be construed as indication an intent on the part of the Congress to occupy the field in which that provision operates, including criminal penalties, to the exclusion of any state law on the same subject matter which would otherwise be within the authority of the State, unless there is a *positive conflict* between that provision of the subchapter and the State law so that the two cannot consistently stand together.¹⁶⁰

In essence, the federal government has chosen not to control all aspects of regulation and has left the states free to enact their own regulation on marijuana as long as it does not “positively conflict with the CSA.”¹⁶¹ Going further, the question now becomes whether or not state marijuana laws positively conflict with the CSA. In order to positively conflict, both laws need to be physically impossible to comply with at the same time, or stand as an obstacle to the objectives of Congress.¹⁶² Again, state laws do not require citizens to use marijuana, if they did, then a positive conflict would exist.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid., 11.

¹⁶⁰ 21 U.S. C. §903 (2006). (Emphasis added)

¹⁶¹ Mikos, *On the Limits of Federal Supremacy*, 13.

¹⁶² Garvey and Yeh, *State Legalization of Recreational Marijuana*, 8.

Ambiguity begins to arise regarding the allowance of medical or recreational marijuana as an obstacle of the objectives of Congress. Legislative Attorneys Todd Garvey and Brian Yeh state:

The extent to which a state law that legalizes, regulates, and taxes marijuana for recreational purposes may be preempted by the CSA is a novel and unresolved legal question. The federal courts, for instance, have not engaged in any substantial analysis of whether federal law preempts state marijuana laws. Existing applicable precedent, which has arisen as a result of challenges to state *medical* marijuana laws, has been developed almost exclusively by state courts, and even then, mostly by lower court decisions that range widely in their approach to the preemption question.¹⁶³

Arguments can be made that either support or oppose preemption, specifically in the case of recreational legalization in Colorado and Washington that mandate regulation and taxation. As of August 29, 2013, the United States Department of Justice is, “deferring its right to challenge [Colorado and Washington’s] legalization laws.”¹⁶⁴ The DOJ’s stance is to wait and see how things work out. If Colorado and Washington fail to enact a strict regulatory system that protects eight specific federal interests regarding marijuana, then “federal prosecutors will act aggressively to bring individual prosecution focused on federal enforcement priorities.”¹⁶⁵ It appears that Supreme Court Justice Louis Brandeis’s idea that states can serve as a laboratory is at work.

5. International Preemption

The United States is party to several international treaties on drug control and enforcement. The 1961 Single Convention on Narcotic Drugs, the 1971 Convention on Psychotropic Substances, and the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances bind the U.S. at the international level to

¹⁶³ Ibid., 9.

¹⁶⁴ James M. Cole, *Memorandum for all United States Attorneys: Guidance Regarding Marijuana Enforcement*, August 29, 2013.

¹⁶⁵ U.S. Department of Justice, “Justice News: Justice Department Announces Update to Marijuana Enforcement Policy,” last modified August 29, 2013, <http://www.justice.gov/opa/pr/2013/August/13-opa-974.html>.

commitments concerning marijuana. In order for the U.S. to remain in compliance with various international agreements as they are currently written, the DEA and Department of State have determined that marijuana must remain at CSA Schedule I or Schedule II.¹⁶⁶ Subsequently, petitions to the Attorney General to reschedule marijuana to a lower CSA Schedule have been denied on the grounds of international treaty violation.¹⁶⁷

How can Colorado and Washington legalize marijuana considering the United States is party to these international agreements? In essence, domestic law is only bound by the conditions of the treaties to the same extent that state law is bound to federal law. As long as federal law does not preempt state law, the state law is not preempted by international law.¹⁶⁸ Based on a web of international and domestic ties, it is important for the federal government to carefully evaluate any legal action it takes with regard to state marijuana laws before it actually does so.

F. CONCLUSION

Voters at the state level have legalized various aspects of marijuana use while remaining subject to criminal penalties at the federal level. State policies concerning marijuana throughout the union are inconsistent at best. See Figure 3. Medical marijuana laws have continued to gain acceptance since 1996 and recreational legalization by two states in 2012 appear to demonstrate a shift away from federal policy. If this trend continues, action at the congressional level will be needed for progress towards streamlining state policies and implementing consistent regulation. Marijuana remaining in a simultaneous legal and illegal status fails to promote consistent regulation. Moreover, a continued advancement of legalization at the state level will continue to place the federal government in the conflicting position of telling the international community that the United States considers marijuana a Schedule I drug while its population licenses,

¹⁶⁶ Garvey and Yeh, *State Legalization of Recreational Marijuana*, 19.

¹⁶⁷ Ibid., 19.

¹⁶⁸ Ibid., 20.

regulates, and taxes marijuana cultivation, preparation, distribution, and consumption. Leadership at the federal level will be required to effectively navigate an international and domestic path towards consistent regulation.

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IV. SHIFTING INTERNATIONAL POLICIES

A. INTRODUCTION

I think a new approach, or at least to open up or break the taboo is what the world should do. There are many possibilities, including the possibility of legalizing drugs. Politically, I know that this has cost a lot. I have already incurred this cost. They have attacked me for saying what I am saying to you. But I don't think politicians or leaders of any country can only say what people want to hear—Colombian President Juan Manual Santos.¹⁶⁹

Leaders around the world continue to struggle with determining the most effective method of controlling drug production, trafficking across borders, and use. The U.S. has been a leader in the supply, eradication, and criminalization approach. After decades of continued investment and an outcome of mixed results, many leaders are beginning to question this approach. Some, such as Portugal and Uruguay, are taking bold measures in order to change the dynamic. Many others, to include Colombia and Mexico, are open to increased dialog concerning alternate approaches and are taking small steps to move away from criminalization. A 2011 CRS report states, “There has been increasing criticism of U.S. drug policy coming from prominent observers in countries that have been key partners in the struggle against illicit drug trafficking.” The CRS notes that former presidents of Brazil, Colombia, and Mexico have participated in a report that cites the current U.S. method of fighting the drug war has failed. Subsequently, former U.S. presidents Bill Clinton and Jimmy Carter have joined world leaders in declaring this model a failure. Marijuana is only part of this debate. As mentioned in the first chapter, marijuana is an integral part of the world drug control regime. Debate on the drug war involves marijuana; Subsequently, debate on changing marijuana policy inevitably leads to questions on how to solve the drug war problem as a whole.

¹⁶⁹ Juan Manual Santos, quoted in *Breaking The Taboo*, directed by Cosmo Feilding-Mellen and Fernando Grostain Andrade (2011; London: Sundog Pictures, 2013), *iTunes*.

B. MEXICO AND COLOMBIA—HISTORY AND FAULTERING CONFIDENCE IN THE U.S. MODEL

Although Mexico, Central America, and countries in the Andean region of South America have all been highly involved in the U.S. war on drugs in some form or another, Colombia and Mexico are stand out cases that have demonstrated an interesting interplay. Each time significant success is made with either supply reduction or cartel elimination, a new source or group moves in to satisfy the consistent demand.

A phenomenon known as the “balloon effect” where eradication on one state leads to increased levels of production in another is at play in the South American Andes. In the 1990’s the U.S. set out to destroy the Medellin and Cali drug cartels that controlled a majority of the cocaine production coming out of Colombia. The effort was successful, yet had the unintended consequence of strengthening the Marxist group known as the Revolutionary Armed Forces of Colombia (FARC) through pushing cultivation into FARC controlled areas and destroying their opposition.¹⁷⁰ In the following years, cocaine production in Colombia increased seven fold from roughly 100 metric tons in 1990 to 700 metric tons in 2000.¹⁷¹ Plan Colombia was then announced as a way to assist Colombia in increasing state security and reducing illicit narcotics, primarily cocaine. Over the next eight years the U.S. invested six billion dollars in this effort with the effect of reducing cocaine production by over half and significantly increasing the stability of the Colombian state.¹⁷² Zooming out, the metric that matters is overall cocaine production in the Andean region as a whole. This number has remained stable at around

¹⁷⁰ Mark Peceny and Michael Durnan, “The FARC’s Best Friend: U.S. Antidrug Policies and the Deepening of Colombia’s Civil War in the 1990s,” *Latin American Politics and Society* 48, no. 2 (2006.): 95.

¹⁷¹ Juan Carlos Hidalgo, “The Balloon Effect in Cocaine Production in the Andes,” *Cato Institute Blog*, June 26, 2012, <http://www.cato.org/blog/balloon-effect-cocaine-production-andes>.

¹⁷² U.S. Government Accountability Office, *Drug Reduction Goals Were Not Fully Met, but Security Has Improved; U.S. Agencies Need More Detailed Plans for Reducing Assistance*, (GAO-09-71: October 6, 2008).

nine hundred metric tons for the last decade. In keeping with the balloon effect concept, production simply shifted to Peru, which is now estimated as the largest cocaine producing country in the region.¹⁷³

Even more concerning is the unintended consequence of shifting the most violent conflict right to the U.S. southern border. Over the last decade narco-violence in Mexico has skyrocketed leading to mass murders, beheadings, and mutilation on a grand scale.¹⁷⁴ The death toll is difficult to track accurately, yet estimates are around 60,000 dead in Mexico since 2006.¹⁷⁵ This shift in violence was brought on by two main factors. First, the elimination of Colombian cartels allowed Mexican cartels to take over operations, and second, the Mexican government's recent crackdown prompted cartels to increase control through more violent means. Similar to Plan Colombia, the U.S. is assisting Mexico through a plan called the Merida Initiative. The U.S. committed \$1.4 billion over a three year period to assist in this effort, yet profits from drug trafficking through Mexico are estimated at \$25 billion a year.¹⁷⁶ Law enforcement is out funded, out manned, and out gunned.

Mexico and Colombia are among the United States strongest allies in Latin America and have followed the U.S. lead in the war on drugs. However, based on perception of the drug war failure, a change of mindset is occurring. Colombian President Juan Manuel Santos has publicly stated he believes a new approach is urgently needed. Guatemalan president Otto Perez, and Mexican presidents both past and present, "joined Santos...in questioning the last 30 years of international drug policy."¹⁷⁷ In 2009 the Mexican federal government passed a decree that decriminalizes small amounts of drugs

¹⁷³ Hidalgo, "The Balloon Effect in Cocaine Production in the Andes."

¹⁷⁴ Francisco E. Gonzalez, "Mexico's Drug Wars Get Brutal," *Current History* (February 2009), 72.

¹⁷⁵ Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, Human Rights Watch Publication, February 2013, <http://www.hrw.org/reports/2013/02/20/mexicos-disappeared>.

¹⁷⁶ Gonzalez, "Mexico's Drug Wars Get Brutal;" Committee on Oversight and Government Reform, *Money, Guns, and Drugs: Are U.S. Inputs Fueling Violence on the U.S.-Mexico Border?* Serial No. 111-54 (Washington, DC: GPO, 2009), 3.

¹⁷⁷ Jonah Engle, "Blow Back: Sorry Washington. If after 30 Years, Colombia Can't Win the War on Drugs, No One Can," *Foreign Policy*, April 30, 2013, http://www.foreignpolicy.com/articles/2013/04/30/plan_colombia_drugs_failure.

such as cocaine, heroin, LSD, methamphetamines, and marijuana for personal use.¹⁷⁸ In 2012, Mexican lawmakers introduced legislation aimed at expanding decriminalization and setting up medical marijuana dispensaries.¹⁷⁹ Mexico is attempting to approach recreational marijuana with methods similar to those that Portugal implemented for all drugs. Specifically, “the legislation would create ‘dissuasion commissions’ to which some violators could be sent for administrative sanctions, in lieu of the traditional criminal court process.”¹⁸⁰

C. PORTUGAL—THE ONLY COUNTRY TO DECRIMINALIZE ALL DRUGS

Opposite of prohibition and criminalization is legalization. No nation in the world has pursued a policy of complete legalization for all drugs, although there are cases of legalization of certain drugs, including marijuana. Somewhere in the middle between prohibition and legalization is decriminalization. Decriminalization does not mean that it is legal to possess or use an illegal drug. Instead it is a shift in policy that moves the topic of drug use and abuse from a criminal act, dealt with in the criminal justice system, to a social health issue dealt with in an administrative fashion. In 2001, Portugal became the first European Union country to completely decriminalize all drugs.¹⁸¹ The results are promising; however, it should be noted that the large success is quite likely due to the thorough framework that was instituted along with the legal shift. The nationwide law that was put into effect was designed to create *complete decriminalization* rather than simply depenalization. The terms are often used interchangeably, as is the case in the United States concerning the reduction of penalties for marijuana. However, the subtly in the case of Portugal is important. In a depenalization framework, drug usage is still a

¹⁷⁸ UNODC, *Cannabis: A Short Review*, 25.

¹⁷⁹ Richard Fausset, “Mexican Officials Introduce Bills Seeking to Relax Marijuana Laws,” *Los Angeles Times*, February 13, 2014, <http://articles.latimes.com/2014/feb/13/world/la-fg-wn-mexico-city-marijuana-laws-20140213>.

¹⁸⁰ Ibid.

¹⁸¹ Glenn Greenwald, *Drug Decriminalization in Portugal: Lessons for Creating Fair and Successful Drug Policies* (Washington DC: Cato Institute 2009), 2.

crime, yet imprisonment is no longer used for enforcement.¹⁸² Several countries in the EU have pursued various forms of depenalization, in a similar fashion to various states in the U.S., as a shift away from criminalization.

Portugal took a studied approach to the problem when it felt that drug use and abuse were becoming unmanageable social problems. A study by the Commission for a National Drug Strategy was funded to determine policy options to the rising drug consumption of the 90s and a view that criminalization was possibly exacerbating the problem.¹⁸³ The study determined that decriminalization was the best policy approach and further stated that legalization was not currently an option based on numerous international treaty obligations.¹⁸⁴ The comprehensive approach involves a shifting of funds from supporting penal enforcement to treatment and administrative procedures through the official Dissuasion Commission. In order to change the social dynamic from one of fear, prosecution, and lifelong criminal labeling, the Dissuasion Commission “has and overriding goal of...avoid[ing] the stigma that arises from criminal prosecutions.”¹⁸⁵ Rather than decriminalize and walk away from the problem, Portugal has embraced the problem as a social/health related one and implemented comprehensive administrative and treatment programs that are adequately funded to tackle the reality of drug related problems and addiction.

Drug tourism was an initial fear. Some believed that Portugal would become a drug haven for individuals seeking drugs without prosecution. This fear has not only failed to materialize, but drug usage has decreased in many key categories with only minor increases in others.¹⁸⁶ The increases are on par or below worldwide increases in drug use. The most important factor, and one that has great concern for the public as well as parents, is usage amongst youth. The UNODC world drug report states, “illicit drug

¹⁸² Ibid., 2.

¹⁸³ Ibid., 6.

¹⁸⁴ Ibid., 7.

¹⁸⁵ Ibid., 6.

¹⁸⁶ Ibid., 11.

use is now characterized by a concentration among youth.”¹⁸⁷ This is particularly concerning for the long-term outlook on lifetime use and abuse of drugs. In Portugal, statistics for 13–15 and 16–18 year olds show a decreased prevalence in nearly every substance after passing decriminalization law. Although decriminalization is no magic bullet, figures across the board have been relatively positive for Portugal to include drops in infectious disease, drug related mortality, and those convicted of drug trafficking.¹⁸⁸ Although marijuana is only decriminalized along with all other drugs, legislation in 2013 was introduced to legalize small amounts of production and use. The legislation failed to pass based on inadequate measures addressing health and safety.¹⁸⁹

D. URUGUAY—THE FIRST COUNTRY TO LEGALIZE MARIJUANA

On December 10, 2013, Uruguay became the first, and currently only, nation in the world to fully legalize the production, sale, and consumption of marijuana. Once regulation is implemented, the state will set volume and quality measures, licenses will be issued for production, sales will take place in pharmacies, and the government will set prices designed to undercut the black market.¹⁹⁰ Uruguay is party to, and has not withdrawn from, the 1961 Single Convention on Narcotic Drugs. This action breaks a portion of the legal provisions of the treaty. The strongest action taken against Uruguay for this breach of international law has been memos of concern and regret by the International Narcotics Control Board (INCB).¹⁹¹ John Walsh at the Washington Office of Latin America (WOLA) stated, “Uruguay is a small country that takes its international obligation seriously. They know that [this legislation] is quite at odds with what the

¹⁸⁷ UNODC, *World Drug Report 2012*, 4.

¹⁸⁸ Greenwald, *Drug Decriminalization in Portugal*, 12–17.

¹⁸⁹ Manuel Rueda, “9 Countries That Could Legalize Weed,” *Fusion Media Network*, accessed March 18, 2014, http://fusion.net/abc_univision/story/tired-drug-war-countries-legalize-weed-18100.

¹⁹⁰ Julio Calzada, interviewed by Jack Davies and Jan De Deken, “The Architect of Uruguay’s Marijuana Legalization Speaks Out,” Reason Foundation, December 15, 2013, <http://reason.com/archives/2013/12/15/the-architect-of-uruguays-marijuana-lega>.

¹⁹¹ International Narcotics Control Board, “Uruguay is breaking the International Conventions on Drug Control with the Cannabis Legislation approved by its Congress,” United Nations Information service, accessed March 18, 2014, <http://www.unis.unvienna.org/unis/en/pressrels/2013/unisnar1190.html>; INCB, “INCB is Concerned about draft cannabis legislation in Uruguay.”

global conventions permit.”¹⁹² Julio Calzada, Uruguay’s Secretary General of the National Drug Council, states, “A society without drugs is a utopia. It’s better to regulate the existing market than leave it to organized crime.” He goes on to clarify:

We are in constant contact with the INCB and will continue to be so. We know their visions, they know ours. Uruguay is a sovereign country, with an elected parliament and a strong democratic tradition, so we’re going to continue with this policy in accordance with our sovereign and democratic rights.¹⁹³

Uruguay’s action to legalize marijuana has roots in fighting a drug war of its own. It is trying to separate marijuana from more destructive drugs. Marijuana is the most widely used drug in Uruguay, but it often puts users in contact with dealers of “pasta base,” a by-product of cocaine production.¹⁹⁴ A *BBC* report on pasta base notes that the drug is often adulterated with caffeine with one user stating,

I don’t know a drug that is more powerful....If you take a gram of cocaine, that’s enough. With pasta base if you consume 1g, 3g, 20g, 30g, you still want to take more. And it is not a sociable drug. Pasta base is a drug that creates enemies.¹⁹⁵

Additionally, Calzada states, “Uruguayan users are smoking *prensado paraguayo*, a compressed blend of [marijuana] leaves, glue, oil, faeces, chemicals and so on. The mix is much more harmful to health than pure [marijuana].”¹⁹⁶ For perspective, one percent of Uruguayan’s have used cocaine and 14 percent, between the ages of 16 and 64, have used marijuana.¹⁹⁷ These figures are statistically comparable to the United States.

Uruguay studied the Netherlands, Portugal, Australia, India, Turkey, and the United States to capitalize on experiences of various decriminalization and medicinal use

¹⁹² John Walsh, quoted in Manuel Rueda, “Uruguay Approves Game Changing Marijuana Law,” *Fusion Media Network*, accessed March 18, 2014, <http://fusion.net/leadership/story/marijuana-legalization-law-green-light-uruguay-18060>.

¹⁹³ Calzada, “The Architect of Uruguay’s Marijuana Legalization Speaks Out.”

¹⁹⁴ Ibid.

¹⁹⁵ Linda Pressly, “The Battle against ‘Pasta Base,’” *BBC*, last updated March 4, 2014, <http://www.bbc.com/news/magazine-26436094>.

¹⁹⁶ Calzada, “The Architect of Uruguay’s Marijuana Legalization Speaks Out.”

¹⁹⁷ Ibid.

regulation. The aim is to take a new approach to reducing organized crime, creating safe access for users, promoting awareness of the dangers of drugs, and to drawing revenue that would normally go to drug dealers. Calzada views the U.S. method of attempting to eliminate drugs with an iron fist, as it did with “Plan Colombia,” as achieving the “spread of organized crime across the entire continent.”¹⁹⁸

E. OTHER NATIONS WITH SHIFTING POLICIES

Calzada explains:

[Marijuana] is a truly global phenomenon. Reports on cultivation and seizures of [marijuana] and on [marijuana] products illustrate that marijuana is not only consumed in all countries in the form of herb, it is also grown in most of them.¹⁹⁹

Different nations around the world have made a wide range of policy choices concerning marijuana. At one side of the policy spectrum lies regulated legalization covering all aspects of marijuana policy from seed to user. Two states and one nation—Colorado, Washington, and Uruguay now occupy this side of the policy spectrum. On the other side, the policy choice is that of complete criminalization of all aspects of marijuana and its use. Many nations and their localities fall somewhere in between these two extremes. Decriminalization, primarily in the area of possession, has gained popularity over the last several decades.²⁰⁰ A comprehensive list of each country's marijuana policy is beyond the scope of this paper and is complicated by dynamic legislative initiatives that continue to occur as the debate on the marijuana and the outcome of the drug war heats up. However, in addition to those already covered, a select list of countries with changing policy choices is instructive for understanding policy choices that are occurring outside of the U.S.

The Netherlands, specifically the city of Amsterdam is often misunderstood as having a legal marijuana policy. This is not the case. Marijuana is illegal in the

¹⁹⁸ Ibid.

¹⁹⁹ UNODC, *World Drug Report 2012*, 43.

²⁰⁰ Kilmer et al., *Altered State?*, 12.

Netherlands. The Dutch wanted to enact policy that would separate hard and soft drugs. Instead of passing laws that would conflict internationally, the Dutch chose to enact regulation that licensed “coffee shops” to permit small amounts of marijuana for sale and prevented prosecution for small amounts of marijuana possession.²⁰¹ Production of marijuana is not allowed, other than ignoring five plants for personal use, so these coffee shops officially have no legal suppliers.²⁰² In order to avoid international pressure, the Dutch have chosen not to enact supply side regulation.²⁰³ Contrary to many other nations that are loosening policy, the Netherlands has made recent attempts to enact stricter policies to curb the very popular marijuana tourism situation. A 2008 law was passed to prohibit sales to foreigners and required Dutch citizens to register if they were coffee shop patrons. Significant debate led lawmakers to revise the law to drop the registration requirement and allow cities to make their own determination on implementation. Some such as Maastricht, on the border, have upheld the ban on sales to foreigners while larger cities, such as Amsterdam, have scrapped it.²⁰⁴

Australia’s marijuana policy changes have focused on eliminating criminal penalties for possession and growing. Gifts are allowed, but sale of marijuana is still a criminal offense. Australia’s states and territories are comparable to U.S. states in that each has its own policy. The Australian Capital Territory, South Australia, Western Australia and the Northern Territory have all decriminalized with various possession and plant limitations.²⁰⁵ Peter Reuter states, “The rational for the Australian innovations was that removal of criminal penalties for possession were meaningless without similar relaxations on the supply side.”²⁰⁶

²⁰¹ Reuter, *Marijuana Legalization*, 1.

²⁰² Ibid.

²⁰³ PBS, “What Can the Dutch Teach the U.S. about Selling Pot?,” *PBS NEWSHOUR*, March 19, 2014, <http://www.pbs.org/newshour/bb/can-dutch-teach-u-s-selling-pot-2/>.

²⁰⁴ Frida Ghitis, “Amsterdam for Tourists: What’s Legal?,” *CNN Travel*, July 17, 2013, <http://www.cnn.com/2013/07/17/travel/amsterdam-travel-legal-parameters/>.

²⁰⁵ Reuter, *Marijuana Legalization*, 2.

²⁰⁶ Ibid., 3.

Chile decriminalized possession of small amounts of all drugs for personal consumption in 2007. Bills have been introduced and Congressmen have met with leaders to understand details of Uruguay's legalization.²⁰⁷ No legislation has been approved as of yet.

Guatemala's president Otto Perez Molina, a conservative, has stated, "Central American countries should consider legalizing the production, transport and consumption of drugs." He has praised Uruguay, Colorado, and Washington for their innovative actions.²⁰⁸ Although discussion of change is happening, possession of any illicit drug, to include marijuana, is criminal with penalties described as severe.²⁰⁹ No legislative changes have been approved thus far.

F. CONCLUSION

Although marijuana and drug war policy choices are gaining greater attention, few nations have enacted significant changes other than decriminalization or recognizing a need for review of the current policies. Additionally, policies concerning marijuana tend to address one aspect or another without comprehensive and consistent regulation from seed to user. Increased dialog and a willingness to consider the realities of human drug consumption trends are a positive step in the right direction.

²⁰⁷ Rueda, "9 Countries That Could Legalize Weed."

²⁰⁸ Daniel Robelo, "Guatemalan President Praises CO and WA for Marijuana Legalization at UN Speech," *Drug Policy Alliance*, September 27, 2013, <http://www.drugpolicy.org/blog/guatemalan-president-praises-co-and-wa-marijuana-legalization-un-speech>.

²⁰⁹ U.S. Department of State, "Guatemala: Quick Facts," last updated October 8, 2013, <http://travel.state.gov/content/passports/english/country/guatemala.html>.

V. CONCLUSION

I believe that drugs have destroyed many people, but wrong governmental policies have destroyed many more. We really need to look at the policy and ask ourselves simply, sincerely, and honestly—Is this policy working? What are the effects of this policy and if it is not working, do we have the courage to change it?

Kofi Annan, World Economic Forum 2014²¹⁰

Standing on the worldwide stage, the United States has repeatedly pushed for stricter enforcement policies, source eradication, and significant criminal penalties for any involvement with marijuana and all other illegal substances. Unfortunately data suggests that countries with stricter drug use penalties do not have lower rates.²¹¹ The United States has the highest usage of cocaine and marijuana in the world.²¹² Cocaine use in a data survey of 17 countries revealed that the U.S. rate was so much higher than all other countries that it was considered an “outlier.” All drug use categories to include those of usage amongst the youth were all higher in the U.S.²¹³ The U.S. also leads in incarceration of individuals convicted of a drug offense. As of January 2014, 50 percent of inmates in federal prison were incarcerated on drug offenses.²¹⁴ It is widely understood that narcotic substances can be addictive and destructive. Failure to address the situation is equivalent to writing off a portion of society as lost, however the current criminal system is both writing off a portion of society and subsidizing their existence through imprisonment. From an economic supply/demand point of view as well as human capital/productivity analysis, the costs to society as well as the U.S. GDP are much higher than the funds invested in the current tactic.

²¹⁰ Kofi Annan, “The Drugs Dilemma: Consequences for Society, Politics and Business,” World Economic Forum at Davos Switzerland, January 23, 2014, <http://webcasts.weforum.org/widget/1/davos2014?p=1&pi=1&a=52638>.

²¹¹ Greenwald, Drug Decriminalization in Portugal, 25.

²¹² Ibid., 24.

²¹³ Ibid., 24–25.

²¹⁴ U.S. Federal Bureau of Prisons, “Inmate Statistics: Offenses,” U.S. Department of Justice, accessed March 4, 2014, <http://www.bop.gov/news/quick.jsp>.

Changing attitudes about marijuana are not necessarily the best answer for how to proceed with new policies for the drug war as a whole. Instead the greatest benefit is in increased dialog and awareness of the alternate approaches to the problem. The end of 2012 was marked by the states of Colorado and Washington passing legislation to legalize marijuana for personal use. They are included with the 20 (plus Washington DC) that have legal medical marijuana laws in effect. International leaders not only recognize the need for change, but are discussing the need at international forums such as the United Nations and the World Economic Forum. It is clear that change is happening with regard to societal attitudes of the problem and how to combat it. Decriminalization of all drugs, along with legalization of marijuana, is one possible solution among many. President Obama's *National Drug Control Strategy 2013* tells us that the administration wants to chart a "third way" that balances health and law enforcement. This concept is a step in the right direction if the funding for drug addiction treatment actually manifests into a shift in policy. Currently, funding amounts do not demonstrate any real detectable change in direction. The decision to go down any specific path requires in depth study of all current known factors, possibilities, and optimization of outcomes.

Finally, further study needs to be conducted to assess the possible impacts of changing course from the current approach to the war on drugs to options of decriminalization/legalization with regulation. The executive and judicial branches of the U.S. government need to investigate and seriously consider alternatives. The U.S. cannot continue to pursue greater criminalization and enforcement as a strategy while ignoring the demand side of the equation. Roughly a trillion dollars have been spent, eradication programs have been implemented, and border security has been increased.²¹⁵ This statement should not be construed to indicate that efforts have been ineffective, on the contrary a lot of data will show empirical effectiveness in one area or another, yet there is no evidence that drug use is disappearing or projected to get significantly better in the near future. Cost estimate and effectiveness measurement studies need to be commissioned along with organization of public campaigns to help society understand

²¹⁵ Walther, *Insanity: Four Decades of U.S. Counterdrug Strategy*, 15.

the true facts and figures. Quick fixes and partial solutions generally lead to unintended consequences. It is imperative that a shift in strategy for marijuana or any other drug be fully understood, fully funded, and comprehensively implemented. Regardless of heated debate on right verses wrong of any policy approach, individual lives and freedom are what is at stake regarding all decisions made with respect to marijuana and the war on drugs as a whole.

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